Dear Jim, 4/27/76

Your "Priority Mail" of night before last did not get here until today. Besides the major enclosure it includes the appeals court notice, the stipulation in 1996 and your chronological listing in 1448.

In order to speed up response I'll be writing as I read and mailing without correcting unless Lil is free when I've finished and before mail time.

DEFENDANTS MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES

Without reading a word I am reminded of the same defendant's same counsel's appeals argument that I erred in not exercising the discovery he opposed. I'd remind this judge that they held that non-existing oversight to be a flaw by us.

In the second paragraph they acknowledge our complaint about their rewriting of my request, not bad for them after almost 5 months.

Are they right on the six categories?

We might note non-compliance with Tyler's promise after more than five months by the time you can file anything. I was delayed in doing anything by their not making an appointment and I am still waiting for the pictures I paid for more than a month ago. On pictures, while you may not forget, I am also still waiting to see some of the pictures I've not been shown.

Perhaps reading further will invalidate the belief I get inmx reading P. 2. par.2, but it is my recollection that under the Federal Rules we are allowed one amending of the complaint if they have not yet responded and they hadn't. So the only question is not whether we'd exhausted our administrative remedies. They do not here indicate that by the time he is talking about we had also exhausted these remedies.

Bottom 2. top 3, the dating of my affidavit. He ignored the other possibility that is the reality: this had been in preparation for some time and could not be executed before that meeting, when it was, prior to the FBI meeting. This looks like he is getting ready for some dirty stuff. So, let us go back to his footnote at the bottom of 2 where Dugan is pretty dirty himself with what he says and what he does not say. I think we should repeat this for the judge's benefit because he is clearly up to a distorted account in which he can't ever state simple facts straight and honest.

He did not have to wait until February 23 for a promise to meet costs. I told Dugan personally on the 11th that I was waiting for the FBI to do as they are required to do, tell me the amount, as Civil Rights by then had and had been paid. I told him that I gave him the assurance, would in writing if he wanted it, but could not make out a check for an unspecified sum. This is, I am sure, in an affidavit that was filed and because it was not then denied and can't be I think we want to make him directly party to the dirty workings and attempted deception of the judge.

Dugan can use the expression that we "finally gave the FBI written assurance" his emphasis only because he did not keep his word, to use what he called his "good offices" and by not having kept his word to tell me the sum for which to write the check. This is dirty and it is a misrepresentation. This makes references to later communications dirtier and more intendedly deceptive.

Besides, there never was any doubt that I'd pay and we have already paid the Department it self for what I'm still waiting for, those 40 pages Dugan told the judge had been copied at the March 26 calendar call.

You might want to use some of his language here when he is talking about time. It took a year all but 24 days - 341 days - to be able to make an appointment to see anything. April 15, 1975 to March 23, 1976 and that March 23 was a month and 12 days after Dugan's promise of "good offices."

I'd not ignore his crack about our affidavit because it is intended to be dirty, that meeting having lasted so long it was not possible to execute and mail the affidavit and include in it any referenes to what we allegedly were given and shown that day - and still do not have.

Prepare an 84-paragraph affidavit after an afternoon meeting that lasted until about quitting time? His intent is paper thing and should be called to the judge's attention. Besides, I told him February 11 that I'd be doing this when I warned him not to file falsehoods under oath. The Dugan personally knew of the coming affidavit.

I like his direct quote of himself on page 3 because it is a lie. It is not all, it has not yet been disclosed and we still do not have copies of what I paid for.

He has the transcript so maybe getting one will cost less. He quotes a typo. I think the way this is going we'll need it.

We are past the promised 30 days and still on him personally and t me we have none of this.

Moreover, after that calendar call I told him personally that the Memphis office is not what he says, the only logical [other] place" and specified knowledge that the WFO was used, that there was a Birmingham charge, etc., and that they had not yet supplied what in in Hq files.

His next paragraph is an admission of an official lie. They claimed to have no other photographs. Now he says the "review" is just beginning. I think we should make a point of this and of my having told the FBI 3/23 that I am prepared to tick off and describe with content and numbers dozens of photos called for that I know they have. Aside from the other relevancies, he is trying to make a dirty point about time. The request is now more than a year in the past. The specifications were xxxxxx at the first face-to-face meeting they permitted, more than a month ago, and they are now for the first time only promising to take their own look at what they are supposed to have searched long ago and I paid for more than a month ago.

In this if not in what follows I am saying that if Dugan want to fight dirty as I tried to warn him against, subject to your approval I want to lay it on him personally. These dirty, crooked federal lawyers have bled me and abused me in every way possible. I want to give the judge a chance to do something about it. I'm not paying them to deny me my rights under the law or to impose needless costs on me to deny these rights and violate the law.

The delays for which Dugan has some responsibility in themselves fall within this complaint. Here he has quoted himself,"that will be done within 30 days," which is plenty of time after a year, and he has not kept his promise and fails to tell the judge this in his argument. He doesn't even say when the "FBI has requested the information from its "emphis filed office" or that it was all covered in the request and the Complaint. However, because he has separated the requests and insists that we can't amend and ignores that we did exhaust remedies long before this, please not that he has again pulled a sneaky one, limiting this to "withing the scope of plaintiff's April 15, 1975 FOIA request." Aside from the fact of the second of months ago, is he not bound by the complaint, too? Did not the judge tell him it is clear the request is for "all?" I think we really should get the transcripts now. If you need a check in advance tell me.

Do you want to go along with this endless stonewalling, his P. 3#2, his only now saying maybe they'll find a time with my limitations of which they and he personally know within the week, less than that of working days, for me to look at whatever they have collected?

Even then he has escapes and evasions built in: photographs only and then further restricted to "deemed within the scope of the request"[clearly another limited reference, to the "six categories" they see in the 4/15/75 request] and even further narrowed for further suppression by "not exempt." God knows what they'll try to withhold as an invetigatory files of something else. This is a promise of nothing except more stalling and deception and misrepresentation.

In the final graf he agains refers to "almost exclusively based on" my affidavit. I'm not sure what he is up to or what it means but I think there must be more that he wants to avoid and dare not totally lie about.

However, these people are not in a position to execute first-person affidavits about or relating to all that is covered by the request and/or the complaint, as Wiseman told us.I think the time has come to demand first-person affidavits subject to the penalties of perjury. In any event, he here is trying to limit this to the FBI and there are at least three divisions of Justice that have pertinent records, probably more, like Office of Legal Counsel. This is not merely an FBI matter.

By the nature of his job Wiseman has no first-hand knowledge. If Kilty were not a professional perjurer for the FBI his knowledge would still be restricted to the lab.

Neither is in a position to respond to such specifics as I laid out to Wiseman 3/23, like pictures of the scene of the crime; suspects; and other items covered. Were these affidavits competent, honest and full they can't meet the minimum requirements and on this basis alone we should object to any acceptance of them. Aside from whatever the content turns out to be when I get to them.

ARGUMENT (pp. 4-9)

P. 4 I think ww want to make strong objection to this putting of words into our mouths, yours in particular.

Where he talks about our "contentions" they are true or false, subject to proof or refutation, and not properly addressed by rhetoric or false representations of them. We have not asked them to admit what they do not admit while using the word. What I have alleged is true or false and I'm prepared to stand on fact, not his rhetorical misrepresentations. An example is my language, supposedly, and inferentially at least yours, "that employees of the FBI are dishonest and are intentionally trying to hide from plaintiff...."

Honesty and dishonesty are individual. I have never said and have never believed that all employees of the FBI are dishonest or are hiding. In fact, I addressed this to Wiseman when I told him I recognized that he had no first-person knowledge and was dependant upon the representations to him of others. I told him also that I was quite prepared to believe him if he stated something of personal knowledge. More, I addressed this to Dugan personally 2/11 near the elevator and asked him to avoid this kind of thing and to avoid trying to palm off affidavits from those without knowledge.

However, on the question of Kilty I'll stand and repeat loudly and clearly and I think you should consider as a partial answer his lack of any statement when we caught him swearing - emphasize this to the judge - diametrically opposite on the then most material. He has proven himself a false-swearer under oath and is immune only because he is the agent of the prosecutor/defense counsel.

Unless Wiseman's affidavit gives me no choice I'd prefer to lay it on Kilty, who is a bastard and a proven perjurer, and Dugan, who is a whore for pay and a corrupter of the law and the guy who defamed the judge to both of us. If I have to go after Wiseman I'll do it. The way this reads to here we have to address everything frontally and point by point.. By the way, in case I forget by the time I resume this - and I have a vascular appointment soon - I did learn in Memphis when I was there with Les, from a police Inspector, that the police did give the FBI prints but not negatives of all the pictures they took. This means that the fake picture attached to the extradition documents is not FBI innocence.

And when you get to here, please make a note to talk to Bud about my pictures used in the evidentiary hearing and not replacable except from them?

I recommend a direct under-oath challegge on his attempt to pretend that there is no hiding with this rhetoric in which he does not address the reality. I told Dugan that each and every question inthe interrogatories was to develop this and if he wanted I'd sit down with him and explain it all. He declined. Make the offer again. It should blow their minds, if not the judge's. But if as I also told Wiseman and the others I do not have to disclose all that I know, because what they will then find will be limited to what I have specified, I'm quite prepared to tick off a sufficient list. Dugan's rhetoric is followed by a reference to "various documents and photographs which fall within the scope of their [sic] April 15, 1975 FOIA request..."

Lock horns on the fact and clobber on the limitation to 4/15. This is not all that is at issue or before the court and his consistent limitation to this ought be hit hard, especially because she told him "all."

What I've expected follows, a selective quotation of Pratt. Our response should include not only fact, that is that Kilty is a perjurer, their supposed answer that I know more than anyone no w in the FBI. but what you said when Pratt threatened you and me. To this day, not counting the affidavits I have not yet come to, there has been no denial of the accuracy of any of my charges, no refutation, and Judge Pratt's opinion of the law is not before this court.

What he is trying to do here with prejudice and dishonesty goves us anx opportunity I'd like you to consider seriously: go the whole way. Kilty is not the only one I've accused of false swearing. Go back to Kleindienst and 718-70 and then to the appeals argument by Justice where they admitted he lied. Then to the Williams affidavit, which also gives you a chance to note the remarkable coincidence in his and Frazier's and Gallagher's early retirements. They have begun to try to address this with rhetoric, not fact. So, let us make it a question of fact and lay all these unrefuted allegations out. By the way, did he not have occasion to answer this in my affidavit? Has he addressed it? Rhetoric is not an answer. The Pratt jazz about calling people liars is a fine chance to use the two Kilty lies under oath in that case.

He follows this with another 4/15 limitation, but he also has not to this day, more than a year after the request, supplied a single picture and he has not shown us most of them. None of the crime or other suspects. He limits it to photos.

Then he follows with the same deception that escapes being a deliberate lie in semantics only. So let us dispute what he says is undisputed, as I think I have in an affidavit already: I did tell Dugan personally on 2/11 that when I was told how much to make the check for you or I would give it to them. So, it is disputed if I swore to it.

He represents the FBI. When I give him the assurance and you give him the assurance, have we not given the FBI all the assurance necessary? And if he is not lying is he not misrepresenting and trying to deceive the judge when he says we did not make any assurance? If he has not addressed this in my affidavit is it not therefore more clear? He fails to refer to the affidavit, so let us make it an issue before her on him and with my prior affirmation which is in the record and he has not addressed.

He repeats on the affidavit here. This time he calls the matter "highly questionable." But he fails to say why and I can think of none. It is addressed as I recall to what preceded that meeting. Wiseman's affidavit preceded it and this affidavit, as I recall, is the answer I promised him 2/11. With his prior knowledge, his knuckles should be rapped for calling it "highly questionable"

The review of the materials to which he refers is a joke. It is the selection of improperly masked documents so few in number that I ordered copies without any "review." In addition there was a partial selection of picture of which they have not yet supplied the copies I then paid for and they have the negatives. There is no need for more than a month's delay. Meanwhile, they also have not complied with the court's order to justify all the deletions when even Wiseman acknowledged there was no need for those I called to his attention. What I think is highly questionable is his not keeping his promises and complying with the court's directions, then lying about all of this. Especially when the documents he did give me, few as they are, revealed others that anyone reading them in the search and review had to know exist and to this day have not been provided.

The last graf on p. 5 is a cheap shot nobody dare make under oath. It again is childish rhetoric as a substitute for not lying under oath. He does not say there are or were no pictures of the scene of the crime in Hq or the WFO. He does not say that in local crimes in which the FBI is to be involved the FBI manual directs that pictures of the scene be taken and provided. He does not say that the local authorities did not provide pictures. He does not say that they did not get them from other sources. He does not say that rather than being a local crime until prosecution it was an FBI case,

as the Memphis * SAC swore. He does not mention the federal, FBI charge filed in Birmingham and already in this case's record. He does not say that the extradition was federal and not state. What he does do is deceive and misrepresent. I think we should ask for a first-person affidavit and ask the judge to entertain perjury charges if we prove that affidavit false. She is uptight on the crime-scene pictures anyway. She might welcome a chance to reduce the burdens imposed not by these cases but by official intent to stonewall and obstruct and violate the law.

And as far as "jurisdiction" is concerned, he does not say what every FBI and DJ spokesman did, that this was the seond largest and second most expensive investigation in FBI history.All those millions and no records? A federal conspiracy charge and no other suspect?

When he pulls this kind of rotten stuff knowing better because we informed him and the FBI and its Office of Legal Counsel and then follows with a comparison with an inventory ruling, I think it is time to use this as a justification for asking for an inventory with some assurance of accuracy and compbeteness and if we can, of retribution if there is more dirty work.

But to get back to his Memphis promise, it remains unkept after his own deadline. We did not ask for Memphis evidence only so the comparison with Greenppan is not appropriate. However, Birmingham is, as if the WFO, and these I did mention and he is silent.

PURPOSES OF DISCOVERY

He again alleges that we begin with the presumption of no FBI employee credibility. This is false. I'd say we begin with proof of it, proof presented in court, proof of specifics I gave the FBI, proof in his unkept personal promises, proof in the small fraction of the documents provided. We are not asking for assurance that they have complied, as he says. We are asking for what they and we know they have not provided and do have. But to flash back to his own way of addressing pictures of the scene of the crime, he has not even bothered to say there are none, not even not under oath. Is this an assurance anyone could believe when it isn't even stated?

Where he argues against discovery, why not cite their appeals brief?

This gets pretty ridiculous when he says they are not required to comply (~~perfect~~ "mechanical perfection") with the request. When they charge me search fees and produce nothing and when they pretend to have delayed because of the non-absence of an assurance to pay them when the Attorney General has prior to this announced two internal investigations and a third has been confirmed in the press, with the delays in all cases attributed to the volume of material to be intternally examined. Press accounts are of 9_ bound volumes of three-inch thickness. So what did they deliver after all this touting? what was it, 10 pages heavily, sometimes entirely masked? With what fantastic search fee after these two recent "investigatoons" and one publicly confirmed by the Department as having been made in 1970?

These few pages for their second largest investigation in history? And she knows the volume on the Rosenberg case.

Whether or not the AG "released ~~the~~ all the documents that were in the headquarters file," we have not received them. Nor from until now the Civil ~~Rights~~ Rights Division, where the current review to recommend an investigation is taking place and whence all those news stories of the 93 volumes originate. (Give her the date of our check, the date of providing and the number of pages.)

The law does not limit us to the Hq file and from the FBI alone he has provided no more than those few pages. We specified the WFO files. But how about Criminal and Civil and Office of Legal Counsel?No word after more than a year and he defends the integrity of the employees responsible for this? Accusessions of being overly suspicious? Is to this minute non-responsive about our proof of withholding in court 3/26 and in person as he was walking away outside the court. I told him the documents refer to what was not provided.

What kind of "good faith" is it when they have not responded on what I've specified. But if they claim this is good faith, let us get that good faith under oath from one who can be held to account, that all they have that is called for is what htey have given us.

With what they have said about prosecutive interest and these new investigations nothing could be more impudent than this citation of National Cable. And irrelevant.

Here is where their boasting to Crewdson can be useful. Before the first of the year they were claiming so many days if not weeks or months of work by a specified number of people in Civil Rights and they have not finished it yet? And a "good faith" search is this crap they've given me? Who could possibly believe it.

It has just occurred to me that this might be a good time to get some blacks into the courtroom, perhaps if he is willing Conyers and let him ask if he has read and heard correctly, that this is all they have on such a crime. I'll speak to Les and get his impression. He might perhaps be willing to give an affidavit of the confirmation of the investigation and the news stories on it (Post better than Times).

We might want an affidavit from him about Jensen's and Civil Rights confirmation of penetration of the Invaders and we have not a single paper on that or a single comment from Dugan on it.

Evasive as all this guck is it might be enough to get us to put some pressure on these ways. All of this is just too far out. The judge herself has correctly interpreted our request to mean all that relates to the crime.

We of course do not know how they have filed. Let us file a new request and say it is because there have been official statements about 98 volumes being reviewed by the Civil Rights Division, we know that what they have given us is less than they have and less than they know they have, so we want to be sure they have not dumped all the FBI's stuff into another place and we want to go over those 98 volumes. (And is not Adams' volunteered statements on them a waiver?)

You can say we avoided asking for all of that on the assumption there would be meaningful compliance but it is apparent they have no intention of complying so we have to take this extra time. I would count the number of pages they have given us and compare that with 98 volumes and the second largest investigation in history and the ridiculousness and dishonesty will be apparent.

This is so raw if you agree I am willing to call a press conference and read excerpts aloud and make comment and in fact show a few examples, like the pictures and comparison of pictures with a sketch of the suspect I gave the FBI and they claim not to have. We can refer to the crime scene pix in the hearing record.

And say the reason they have not produced them is because they show the bundle being handled and moved and that the picture they used in extradition is a later. staged one not of the package as it was found or where it was found.Certainly not when with a clock to prove it. If you want I'll say more, about other pictures I know they have, not just that they should have them with all the spent millions. I'll describe a few. I might even produce the window too closed to have been used and with an object where the gun had to have been if you think the timing is now. I do think this is the time to lay it on. Maybe I'll write Conyers and feel him out on this after I finish this draft and see if we can see him after the calendar call.

I phoned Les. He is not home. He called me from Boston yesterday. They have him there on a status piece on the racial violence. I made a few suggestions to him and he may have stayed there to tomorrow or later.

Before I forget I want to re-emphasize that all of this is restricted to the 4/15/75 request.

With all the jazz about the Memphis Field Office, which may have unloaded all its filed by now anyway, do we want to give her the receipts we got on discovery for the shipping of cartons of stuff to the Washington Field Office?

Kelley said on Black Perspective on the News that they had only circumstantial evidence and that more might be forced out by FOIA. Do we want to use that? He admitted that they lack a connection between Ray and the crime. Does this give motive to what they are up to, less than 100 pages and no crime scene pictures with an admitted 98 volumes in Civil alone, and they have less than 100 pages for us?

Nothing from Criminal? Nothing from Civil?

Do we want their regulation which specifies that they have to give us an estimate as Turner wrote you to clobber his repetition of the falsehood that we did not agree to pay until 2/23? Is Turner's letter enough on this, with no response to my affidavit on this?

What I'm driving at is how best to attack their being so uptight as to pull this rotten stuff that is so dangerous if she gets mad, which I'd like to help along.

III Plaintiff's Affidavit

I skimmed this and the Wiseman affidavit after writing the earlier pages because it was getting close to bed time. Because I'll have a broadcast that can last as long a four hours I forced myself to stay in bed until 6, not to get too tired. This gives me less time for what I'll be able to do before I go into town this afternoon, when I'll mail what I have completed. I hope this can be all.

I thought about the approach they have taken, how unusual it is that they make the false claim to a point-by-point, paragraph by paragraph answer to my affidavit when in fact they do not. I also believe it is not impossible that they have contrived for us to have to contend with both suits at one time knowing it will overload us because they are really uptight in both. Whether or not this is their intent, we do have to meet the needs of both at the same time. So I think a simplified approach is necessary.

I think we should say in my affidavit that there is no point in engaging in a shouting match of meaningless denials and accusations, that there is a record and it is all one way, in support of what I have said. And then take Wiseman's affidavit, pick a number of the points he pretends to address and hit them each hard. Not number by number but subject by subject. I remember Dugan's representation of Wiseman's aff. as unfaithful, that he claims a number-by-number refutation when this is not at all true. I raise this because I think our purpose should be to make out a case of the most deliberate deception of the judge including all of them. I'll include what I can remember that I think is appropriate to illustrate this. They are trying to try the case on us, including you. I'll turn this around and in the course of it without defending us will make the point.

One of the several places he says he responds as I recall is on 7, where his words are "to respond to each of plaintiff's paragraphs." Of these the first 22 in Wiseman is dismissed as irrelevant and this is called an answer. I am sure this is not true without checking my affidavit. You know this best. The point should include the deliberateness of the lack of fidelity in representations to the court.

Because the first of thes subject that requires demolition is at this point (top of I'll address it now:

"We submit that this would be unnecessary had plaintiff promptly given defendant written assurances he would pay the search fees (instead of waiting until February 23, 1976) and awaited the subsequent disclosure that was made March 23, 1976."

He and Wiseman use exacyly the same words without deviation in each of the many references to this distortion and dishonesty. We should refer to my affidavit and note that instead of addressing it they have resorted to a special kind of semantics wit out which we could say and prove that they are all lying.

There is no connection between my affidavit and hat they blow up out of nothing into "the subsequent disclosures that were made March 23, 1976." I think this should be another and connected subject we address.

Wiseman and the FBI, in order to stall us, violated the law an then try to pin this responsibility on me/us. I addressed this with Dugan the first time we met, 2/11/76, and told him that as soon as Wiseman told us what he is required to tell us one of us would give him a check. Instead of denying my truthful representation, Dugan twist this all around to make it appear to be other than it is. But in his paragrpah 26, rather than refute what I swore to, he confirms his obligation under the law, one he did not meet until March 23. His own citation of Subsection (c) of 28 C. F. R. 16.9 is exactly what Assistant Attorney General Turner had written us,"...the requester shall be notified of the amount of the anticipated fee or such portion thereof <u>as can be readily estimated</u>..." The emphasis is Wiseman's. As I told Dugan and as without real contest my affidavit states, until Wiseman did this I could not send him a check.

That you argued with them about excessive and unnecessary charges is not the point. They have the right to raise all these charges. But they also have the obligation to respond, to comply with the request and to tell me the amount of estimated fees. This judge knows very well and I would remind her of the charges running well into the thousands- was it not $18,000 in the Rosenberg case to which they refer -and I could

not possibly write that I would pay any exorbitant charge they might contrive, especially not when the Department was simultaneously - before this- propagandizing the country about the astounding number of file cabinets of relevant data it has and about these 98 volumes each three inches thick. This is in the Crewdson series which was the turn of the year, I think beginning New Years day. They deliberately contrived a situation they could misrepresent as they have. Wiseman has qualified as an FOIA officer in supervisory capacity. He has miscited the law to his own wrongful end. He knows the law and knows he had the obligation to inform me of the estimated cost, as the Department's own division to respond had in writing, in response to which we immediately gave it the check asked for.

I think we should bracket this with that alleged disclosure.

I note that Wiseman admits another failing on their part and dates it at March 9, "we advised him in our letter of March 9, 1976, that we were 'unable to furnish an estimate of the special search fees which must be incurred."

This immediately follows his quotation of 28 C. F. R. 28.

It is false to say that "these search fees must be incurred." They do not have to assess them, in minor cases have not against me and as you noted did not against millionaires well able to pay.

Where the law addresses this, even in his own citation, it distinguishes: "... the amount of the anticipated fee or such portion thereof as can be readily estimated." He did neither. He did not estimate the whole thing, did not estimate part, did not tell us anything (including no after we both promised Dugan we would pay any non-exhorbitant fee on February 11) and they distort the law still further in wrongful emphasis. He makes it read that "a request will not be deemed to have been received" unless the requester "agrees to bear it (the cost)" however, the operative word of the citation are "until the requester is notified of the anticipated costs." As we have said all along they never notified us, we agreed in general and in principal and long before this, without any denial in all these irrelevant words, and the prior obligation

underthe law they <u>never</u> met until I was able to force it March 23.

What this means xx is that they have fabricated a perpetual-motion non-compliance machine. They do not meet the need of the law, to tell us the estimated cost, then they claim because we have not told them in writing that we will pay they don't have to even begin the search, and they ifx ignore our assurances of payment when we are given the amount to pay, pretending even in these papers that we did not give these assurances.

I think in connection with this we should give the history in this case; request of 4/15/75, a year ago, never responded to. We are patient and given them a long time before we appeal (date) Then do not act on the appeal. So, after again giving them plenty of time (___month) we file. Bingo, as soon as we do we get 18(?) pages and ___ pictures which do not include what we asked for.

This is a clear record of stalling. So is the contrived misuse of 28 C.F.R. However, we will want to go into this great disclosure they talk about of March 23, in connection with this.

They told me that day that the search fees were $14£.00. For what? For fewer than 20 pages the sole value of which are as proof they knowingly did not comply because they refer to what is relevant and not supplied; and because they contain reference to what should be another suspect and should have been investigated, the Chandra Chandra Dutt stuff; and they masked injudiciously and to date have not complied with the court's order to justify the masking.

It isn't possible that $14£ in search fees could have been incurred in selecting out of the boasted enormity of relevant files these trivialities if the search was legitimate. But it is certain that trivial as these few pages are they do contain references to other files not delivered and relevant.The non-compliance here is overt and deliberate.

If you want to address what Wiseman says about this (10) and I suggest it, he lies. And deceives. He follows the distorted citation of "<u>agrees to bear it</u>" with reference to the 3/9 claim not xx to be able to estimate the search fees and inthe same sentence,"and neither plaintiff not his attorney objected to this in any conversation

with representatives of the defendant that I am aware of, and the fees were finally paid without protest at the March 23, 1976 meeting."

No part of this is not false. On the last, we did reserve the right to recover these fees and they are now clearly an outrage. We have this, I believe, in writing, but we also made it explicit to Dugan 2/11. The fact is that in this long, tortured history of stalling he did know of a conversation in which we agreed to pay and it was 40 days before they agreed to the meeting Tyler offered almost four months earlier. It is in my affidavit if Dugan deceived us and did not use his "good offices" with his client. Wiseman knew of this because he supposedly is responding to that affidavit. Mr. he lies.

So, back to Dugan and page 7: he submits that something would have been unnecessary if we had "promptly given defendant written assurances that " we "would pay the search fees (instead of waiting until February 27, 1976)" Whatever he may be referring to, aside from his personal falsification of our not having made the promise when we had to him, this would not have obviated the necessity to respond to Wiseman' affidavit, as I had also told him 2/11 I'd have to do because non-compliance was as apparent as the intent not to comply.

It is deceptive if not misrepresentative for him to follow this with "and awaited the subsequent disclosure that was made on March 23,1976." That has no relationship to the first Wiseman affidavit, its purposes (Dugan had said to moot the case, too) or our needs to oppose it.

He admits this purpose in his next graf, "dismiss or, in the alternative, for a summary judgement at an earlier date."

Here (8) he cites Wiseman's gross and deliberate lie, whether or not you want to call it this or something gentler, of several parts.

1) They are in the impossible position of having to prove a negative;

2) I am **now** claiming there is further information (not just now and not now for the first time);

3) "we simply do not have the records which he claims we do";

4) What he gave us 12/3/75 is "all the information we could locate and release";

5 (He is careful to cover this lie by the added qualification "which the Deputy Attorney General deemed responsive to plaintiff's request";

6 "And we had done this before we were notified by the Department of Justice that Plaintiff had instituted this action;"

7 "the further material which his attorney's letter of Febuary 23, 1976, stated he was interested in;"

8 "there is nothing more we can do in responses;"

9 "he will be furnished [only]... the non-exempt material...of our Memphis Field Office."

I have taken each provision and will address each in the event you would want to us this as illustrative of the deliberateness of the deception of the court because Dugan emphasizes it.

1)They are not in the position of having to prove a negative except that if they could prove it they could get away with non-compliance, the clear intent. Contrary to what Wiseman swears to I did specify enough of what is being withheld in our 3/23 meeting. I was careful to tell him and the FBI lawyer that while the burden of proof was not on me and while I would not get in a position where I would tell them enough to not be able to prove further withholding, I recognized they had no first person knowledge and would tell them enough to permit them to shake more loose. Instead of going into this in dealing with Wiseman's affidavit, I'll include enough here.

I told him the masking was ridiculous and showed him - and he with some embarrassment agreed that it included well-known names that had been published internationally in multimillions of copies and countless articles and specified in the guilty-plea hearing. To provide what is wrongfully masked is not to have to prove a negative. This is true of the other murder victim whose body was found at the Atlanta airport. It is true throughout the few pages given us 3/23.

I told him he had pictures of the scene of the crime as anyone would expect and that the sources included the local police and other normal sources and that if necessary I could and would give the number identifications and a description of the contents

We later proved in court, when we has had a chance to read the documents, that they prove the existence of others that are covered and are identified in what little was provided.

I told him that what he does not ever mention here the Washington Field Office, was used extensively in this case and that I have receipts for the shipping of cartons of what is clearly covered to it after the guilty-plea hearings.

I told him that I have examined countless specimens of evidence in the clerk of the court's office in Memphis, cartons of it, and that in not one case was there an attached FBI report but the specimens were all properly identified by FBI lab numbers.

He has been directed by the court to 1) justify all the masking and 2) make a new search for crime-scene pictures. He has not done either and neither requires that he prove a negative.

While this is anything but all the non-compliance it is enough to make the point that he isn't being truthful here, knows it as does Dugan, who was in court if his client did not inform him. There is no need to prove a negative. There is the intent not to comply and withhold. We gave him enough specifics for producing these withheld and covered records by no more than phone calls. His own FBI training told him these have to exist. Perhaps this would be a good point to include what the FBI handbook says on crime-scene pictures to fortify what the judge said. I'll be adding a quote after I complete the draft.

Oh yes, on what had not been supplied to his knowledge: I showed him the few pages from Birmingham, reminded him of the conspiracy indictment and told him that in a Washington Birmingham file, in whatever supported Hoover's press release on this and/or in Birmingham there had to be what is relevant. (I never said or suggested all 59 FBI offices. This is a manufactured dirtiness they have thrown in.

2) This is not merely a claim and it is not just now. I said this in my letter to Tyler last December and it has never been denied until this false swearing. I also gave Wiseman proofs, as 1) shows. I could have added to 1) other suspects and published FBI statements on the sketches. I told him I have still others and their files have to. This belongs in 1)

Dugan has personal knowledge because I told him 2/11.

3) is a deliberate lie, as 1) proves. I specified enough 3/23. It is conspicuous that Wiseman makes no reference to this that I recall nor to our proof in court by the documents he did give us that he knows of others.

4) He may be hiding behind "and release" but again I gave him specifics, he fails to say he used these proofs as lead and instead says there is no more without having made or reported making any further search for which I did pay $141 already. An example of what can emphasize this is he does not say he asked the WFO when we told him we had proof of receipt by them and if he wanted us to would identify receiving agents. Do you want to attach the receipts?

5) Clearly what they gave us is not all that is covered by the request in any interpretation and my specification to Tyler remains after almost 5 months without response.

6) Here I'd note the date of our appeal and the amount of time that passed without our ever being informed that they would deliver anything. Did they respond at all? It was about 8 months after the request we were never told would be met in any way until after we had to file because their non-responsiveness forced it. We gave them plenty of time,

7) This can't be "further material" and is their selection under our request. There can't be anything new in this and isn't.

8) The most obvious of what they can do that they haven't is with the proofs and leads I gave him and with what he was told in court by the court and with what I showed him from a mere glance at what he gave me 3/23/76 It is a plain lie to say he can do no more. He admitted 3/23 that the masking was wrongful, so at the least he knows he can provide that. He admitted these records referred to others that exist and are relevant and he here lies about it. I do think this is deliberate, or perjury with compliance now the issue.

9) Offering what is in the Memphis Hq only and that after the time promised

is. to his personal knowledge, clearly inadequate. But he even hedges that with "non-exempt." This means to prepare for the claim that everything there is an investigatory file. Here I note that he has never specified having anything that is exempt and under the law he has to justify the exemption by meeting the burden of proof. I think we might use this as another justification to ask for an inventory. But in further answer, there are the Washington and Birmingham Field Offices and he has not yet said a word about either despite the proofs I gave him.

I think she will get a catalogue of FBI horrors from taking Dugan's selection and showing its falsity and Dugan's personal knowledge of it.

I have to take a brief break here for other things. I want to suggest on the point of the judge that we need to strike a balance that includes also the time we have. I think we have to give her as much specifics as possible, as much proofs of deliberateness of non-compliance and personal misconduct by those involved without overloading her. We have to let her see clearly that what is burdensome to her is of their creation, with it having the purpose of violating the law and enticing her into sanctifying it. In all of this they are up to the old trick of trying to place the burden of proof on us. I'll be addressing other aspects separately under different subjects.

IV PLAINTIFF'S Mar. 23, 1975 FOIA Request

This begins at the bottom of p. Dugan says, with no citation of even a contrived authority, that "It is clear at the time this amendment was filed this Court had no jurisdiction over this... since the plaintiff had not exhausted his administrative remedies. We submit this Court should not condone such a practise..."

Why not? His failure to cite any authority for what he says is "clear" is because what we did is under the Federal rules, which permit us to amend if they have not responded. We had filed, the case had been assigned, they had not responded, and we with complete propriety and proper sanction amended.

Note that in what follows on p. 9 while he is claiming compliance he limits that

of civil rights to no more than "has <u>made an</u> offer of <u>partial</u> disclosure." with a request more than a year old? A complaint now 5 months old?

I'll be picking up on this "not been able to gxxxkx reach" our 12/20 request in a layman's formulation, wherever and however you want to use it, I am inclined to think in response to Dugan. He here refers to due diligence and I'll be addressing that as it relates to me. (For all the world as though non-compliance even by the FBI is with "due diligence" when it is a year old. When they did not comply with the requests and ignore the appeals he calls it "due diligence.") Maybe with his citation of four months this is the proper point.

His papers are dated <u>four months to the day</u> and there has been <u>no</u> compliance by the FBI and none even promised. Separate from whether or not we acted properly in amending. Separate from whether or not they responded to our request and appeal, which as I recall it they did not and I mean until now.

He brackets this with an argument about burdensomeness that Mike Wiseman expands upon. They manufacture this burdensomeness to build phoney statistics. Then they plead these statistics as a basis for violating the law. And call it good-faith and question ours.

Here is one illustration.

Last year I filed a number of simple request. I never received <u>a single</u> acknowledgement that identified any single request. I then wrote Kelley and he sent me a list of those he said had been received. This did not include all those I filed. On one day in October I filed several, all in the same envelope. When they finally sought to list those the FBI had received he did not include one for their files on me under FOIA/PA. Yet it was in the same envelope as one he did acknowledge, if not until after I wrote him and complained that their system guaranteed confusion and that none of it was necessary. Well, finally Kelley acknowledged the October request for the files on me. Now Dugan argues that four months delay is okay. Well, it is the end of April, May before you can do anything, and there has not been another word about any one of

Where he here ends with the request that our motion be denied he has, in fact, justifi[illegible] [illegible] and a Vaughn motion we should not file.

To be continued

Wiseman Affidavit (executed 4/21/76, or after four weeks)

In II he alleges"full compliant" when I personally pointed less than full compliance out to him and the court concurred in your allegation of less than full. At the end he says my affidavit of 3/23 deals with "our methods of complying" as always carefully limited to the 4/15/75 request.

III says he is limiting himself"to only those of plaintiff's allegations which bear any relevance to this litigation." He then immediately acknowledges another possible interpretation and says if directed by the court he will file a "supplemental affidavit." He goes farther in evading the point and the basic purposes of discovery in saying he is limiting himself to "only our methods of compliance." On this basis alone I suggest you move to strike it as immaterial. ~~XXXXXXX~~ Method is not the issue. Compliance is. I have given him specifics to address on compliance, the judge issued orders to Dugan, and all have been ignored. On this basis alone there is non-compliance and the affidavit is entirely irrelevant even if it can be interpreted to address compliance because his ~~init~~ initial and all-controlling affirmation is "my affidavit treats only our method of compliance with Plaintiff FOIA requests." His plural. This is further disqualification because in II he limits this to one request, that of 4/15/75.

Could we add that it is also contemptuous and a deliberate new stall to avoid what is certain to be embarrassing? He does not at any point address the amended request even if he here says he is by use of the plural.

He told us he is not familiar with the lab tests so his gratuity at the top of 2 about what he "honestly," believes is incompetent.He told me he is entirely unfamiliar with this and it was not part of his training.

There is no basis for saying as he does that my grafs 1-22 ~~xx~~ "are irrelevant to this litigation." They address compliance or non-compliance, are a proper means of discovery and his failure to address them, as I see it (confirmed by your recollection of their content by phone earlier) his refusal to address them is exactly the same as his refusal to see if there could have been non-compliance.

Can we include this and the similar in a motion to strike?

23. The court has already decided and ordered answers not rhetoric. I'd lay this on because she did overrule Ryan on this.

24. Whatever this is he is not competent to respond and say so.More for striking?

25 again is outside his competence. It relates to "The Department of Justice," as he says, not just the FBI, and there is no question about my accuracy because, as is now certain, he personally delivered more thereafter and so have two divisions. I was correct and he is not telling the truth. He actually contrives this one to be able to go into what is irrelevant later and to lie immediately below, "in meetings which I have attended or have knowledge of." His attendance is a fortuitous thing because the

nfirmed it three days after the only meeting he and I had. (The only other meeting I have ever had on this was ours on the spectro, and am I glad he has brought this in! If I don't come back to it remind me. I think there is basis.) Ryan also admitted the truth of what I alleged in court and in these papers, as does I think Wiseman in the promise of the Memphis records. Wiseman did in our meeting, on Birmingham. This therefore becomes defamatory as well as deception of the court?

My "various FOIA suits." I should come back to this later but again don't let me forget. There is none, ever, against DJ in which they did not initially lie and later deliver much after swearing to full compliance. The point with spectro is important because he makes it an issue.

The lie is deliberate and obvious with the 3/23 material alone. Two ways: that it existed and he, personally, delivered it, too-little that it is, after I filed the affidavit and prior to his execution of his by four weeks; and by the specifics I gave him, plus yours, as I recall, on the Birmingham charge. I have listed other specifics about this and this part makes me think that we should attach the receipts where I refer to my offer of names if he needed them. He didn't ask, of course.

However, there is no single instance in any case against DJ in which after I quite accurately claimed withholding and proof of it that what I alleged was withheld was not, if incompletely in some cases, not provided. In one case I did get a summary judgement, a case to which he later refers. So if he is as familiar as he swears, is he not here swearing falsely, aside from being defamatory while hiding behind process?

The "additional material" he provided, that miserable incompleteness, is not the way he "spent an entire afternoon." When I found out how few pages he was talking about when, by your prearrangement, I phoned him to report we would be there at one, I ordered and paid for copies of all-18 pages. This was before that meeting. So he lies even about the rest of the time, the meeting. It was devoted to trying to show them that there is not yet and was then not yet compliance.

He calls this "the latest." For me it is only the second, and there would have have been the first if they had not asked it or the second if Tyler hadn't. We asked not for any meetings but only for what I seek under FOIA.

He not only has not gone "far beyond" FOIA, he hasn't come face to face with it.

He is incompetent even to lie about "as in past meetings" where there was nothing like he represents. This also is not suitable in his affidavit and I think we should complain strongly about his using an affidavit for propaganda and on this added basis ask that it be stricken. He has asserted his expertise at the beginning, therefore he knows this is also improper.

He lies about my "moving to another subject." Each time I was specific and there is no way of proving it except under oath, where we can go into the proofs. However, what happened in court 3/26 ought be probative.

Incompletenes is even the Judge's expression and Dugan's admission. Memphis FO is enough.

I made no "oral request." What I did orally is show him where he was not in compliance, the current state of the case, as I understand it, and no other occasion for any meeting. By the way, we did not arrange for it to be in the Office of Legal Counsel or ask for one of them to be present.

You and I both did what he says I did not, told him of what was not supplied and existed.

Here he is trying to pass the burden of proof to me. It is his obligation, not mine and if you say this re-emphasize that what he delivered 3/23 is proof of further relevant records not delivered yet I paid $144 for the search alone.

26/ Was his affidavit in response to interrogatories?Ostensibly. I checked.

What is interesting to me here is an admission of non-compliance and knowing non-compliance:"...the answers do not state that they are based on all information available from all FBI files pertaining to the assassination of Dr. King..." Does the law require less? Am I entitled to less? Is he obligated to less? If I pay, as I always have, even when the amount represented what has to be fraud, they have to deliver what they can find. He here admits there is more that he has not provided while simultaneously having above sworn to complete compliance.

The interrogatories do not have to ask what he calls this question.

The law requires it. Your comment is, as I think, to show non-compliance.

"...all information in the files we reviewed."

Who is "we?" He doesn't even claim to have "reviewed" the right files. We are entitled to what can be found in any and all files and he has already indicated the known existence of others not searched, as I also specified/ 3/23/76.

Where he limits to whatever is "central records" and further to in FBI Hq and then limits further to the "day-to-day", after her experience with Rosenberg, etc, I think this would be an appropriate place to include that gibberish of file designation in the basic source material list and allege that the law requires compliance and not artifical and meaningless limitations, whatever he may be referring to here. He has acknowledged the existence of other unsearched files. While swearing to full compliance. I think we have to give her this one, esp.with the Pratt precedent of "substantial compliance" where we proved non-compliance. The semantics in what follows is worth doing something about if you want to. The 59 field offices is an artificiality. They never asked the three most relevant, DC, Memphis and Birmingham before he swore to a full compliance and when he with all his training knew there was no picture of the scene of the crime.

We didn't ask him to go beyond what the law requires. All we asked him to do is what he refuses, do what the law does require.

I see in this line another effort to rewrite the law in procured decisions based in all cases on false representations to court.

If they have, as they always do and know they do, files in a field office that are not duplicated in DC, how does it require him to go beyond the law to get what the law specifies and does require?

It is to his knowledge false to claim the Memphis office is the only one that can hold information. Again DC and Birmingham at least.

Whether or not he qualifies himself on what can cause the FBI to grind to a screeching halt, as he does in a retreading of the Williams effort in 718-80; and whether or not he is an expert on Congressional directives to the FBI- can any be more overwhelming than its vote on FOIA? - his claims come with particularly bad taste and timing when they are followed immediately by the finding of the Senate that the FBI has engaged in more than 900,000 illegal and unConstitutional non-criminal domestic investigations. If all of that illegal waste of federal money and FBI effort to not wreck the FBI it is not about to collapse from compliance with this law. There is gross and callous indifference to right and wrong when, having committed these most serious offenses aginst law and decency, the FBI, through Wiseman, complains that citizens are availing themselves of the insignificant redress it was within the power of the Congress to grant in restitution of all the FBI abuses. Were it not bad enough to have violated the law, it is worse to protest that the little that can be done in penance and rectification is ruinous. Wiseman et al here are also another case of spending more time, money and effort in trying to nullify the law than the most total compliance could conceivably cost.

It is almost time for the b'cast with Howard so I'll lay this aside.

Where Wiseman talks about my prior charges I think that we can perhaps best here rather than with Kilty, whose affidavit I have not yet read but I'm making some guesses about it, go into what the Government said about these charges in court and with his and Dugan's citation of a selection from that case, have not mentioned. Not that my charges have been invalid but the opposite, that I could properly make them ad infinitum. With a reason that gives me better credentials than Wiseman: I know more about this subject than anyone now in the FBI.

Getting this before her with a Pratt decision can't hurt and does answer

There will be other places to use this if you don't like here. I favor here with the proof of Kilty's perjury, which can be very simple, direct quotes from both disagreeing ones, prior to getting to him. I am sure he can be dispensed with summarily, which I think will be better.

27. Wiseman's pretense that the final sentence in this graf of my affidavit "requires no factual ~~factual~~ response beyond denial" is as example of the truth of my affidavit. The graf ~~is~~ says that the customary means of avoiding a charge of perjury is to have one without first-person knowledge execute an affidavit. Despite this self-~~serv~~ serving non-response, Mr. Wiseman has made it clear that he lacks any first-person knowledge of any kind and that he is merely a functionary in the FOIA/PA unit who can swear falsely with impunity because he can always say what he has in this affidavit already said, that he did not conduct the actual search and has no knowledge of the files that in compliance should have been searched. However, this does not keep him from swearing to allegedly full compliance.

28. The reiterated falsification in this paragraph could not be more deliberate. I asked for all ballistics tests. In the third paragraph of Mr. Tyler's letter of December 1,1975, this comes out as "'ballistics tests (item number 1 of Mr. Weisberg's request), as performed on either the death bullet or Mr. Ray's rifle." To say that this constitutes a redefining of my request, which is for all the ballistics ~~evidence~~ testing, is neither to exaggerate nor demean the Deputy Attorney General. To say as Mr. Wiseman here does that this is not a changing of my request to pretend it was for other than is perfectly clear is to insult a subnormal intelligence. I did tell Mr. Tyler that he had redefined my request. In the ensuing five months Mr. Tyler had not [illegible] need to deny the accuracy of my statement.

[illegible] the earlier part of [illegible], which [illegible] does not address, may be of [illegible] interest, [illegible] with regard to the attempt to use [illegible]. You have a Civil Rights internal memo on this now. [illegible] Lee confirms what I told you about his calling after 1/20/76.

29 Under FOIA there is no need for "an expert" to take "a great deal of time to review, digest and comprehend" the scientific tests called for in this cause. All that is required of defendant is that he produce copies for which I paid. Whether or not they are "very complicated examinations" is immaterial. This action does not call for any expert opinion. It calls for documents only.

The rest of this paragraph is an outrageous misquotation of what I wrote the Attorney General December 4. However, when Mr. Wiseman executed his affidavit April 21, [illegible] the Attorney General announced a new investigation, he had no [illegible] there would be this new investigation. That announcement, of April 29, [illegible] mere justification of what I alleged. It is an official investigation of what I alleged, whether or not it is a direct consequence of several letters I did write the Attorney General [illegible]. Naturally Mr. Wiseman does not quote them.

What he says [illegible] my letter is, "plaintiff claims that the United States Department of Justice, the FBI, numerous and unnamed 'Tennessee authorities' (presumably law enforcement and prosecutive officials connected with the James Earl Ray case and even by implication, the Columbia Broadcasting System, have engaged in a conspiracy..."

Quite the opposite of Mr. Wiseman's non-accidental misrepresentation, again confirmed by the April 29 announcement of an official investigation, what I actually said of "conspiracy" is "I therefore call upon you...to have an independent investigation... of what amounts to a conspiracy within your department..." An external investigation was the recommendation of the Chief of the Civil Rights Division. I did not charge a real conspiracy. I said there was what amounts to one. Rather than involving what is neither stated nor suggested, "numerous and unnamed 'Tennessee authorities'" I was specific, "within your department."

There is no basis for Mr. Wiseman's sworn "implication" that I suggested, believe or stated that his imagined conspiracy involved CBS. There are four references to CBS in this letter, usually, again completely confirmed by what the Civil Rights Division has delivered, with the defendant's efforts to use CBS and with defendant's efforts to bracket its later request with mine. ("...seeking to merge it, my request of April 15, with a later one by CBS...";"merge...with a later one by CBS...";"after CBS made request...")

Jim-at ach what we got from Civil on CBS to this?

Not only did I neither say nor suggest any kind of "conspiracy" **with** CBS, I said the opposite, suggesting what this newest material establishes, that respondent was trying to [illegible] CBS"...It is a careful selection from the FBI's files that, if used by CBS, will inevitably be very prejudicial..."

However, there is no reason to disagree with Mr. Wiseman's gratuity that is not connected with anything else. I cannot comprehend or understand how any reasonable construction or interpretation of the FOIA could possibly result in a belief that a claim of this sort is the proper subject of litigation involving the FOIA."

Mr. Wiseman's problem is that he cannot comprehend his own invention. Perhaps he invented it for this special use.

There is no suggestion of "numerous and unnamed 'Tennessee authorities'" nor is there any ambiguity about those references. It is clearly to the prosecution and nobody else, as "the users of the perjurious testimony known to the Department to have been perjurious." (The fact of perjury was established in Ray v. Rose in October, 1974.)

It is Mr. Wiseman's invention that this letter deals only with FOIA matters. My request for a new investigation, now agreed to by the Attorney General, certainly is not an FOIA matter.

31. The quotation here could not be more purposefully a wrongful quotation. Mr. Wiseman say the first sentence of this paragraph 31 of my affidavit is incorrect because "Deputy Attorney General Tyler did not 'rewrite' plaintiff's request..." In support of this Mr. Wiseman, pretending it is faithful when he knew it was not, quotes as the revelant part of Mr. Tyler's letter of December 1, 1975, "'...I have decided to ... grant access to every existing written document, photograph, sketch...'"

Proud words but meaningless in and of themselves because it did not happen. But the language I was clearly and unequivocally addressing, as Mr. Wiseman knew, are the entirely unjustified limiting of my request for **all** ballistic evidence to "as performed on either the death bullet [sic] or Mr. Ray's rifle."

Mr. Wiseman then undertakes to propagandize this Court further by reference to

I had prior personal knowledge is false," "the complete release of being made of all records..." It was almost four months later and a month before this false affirmation that Mr. Wiseman [illegible] pages of records that prove there was no "complete release" on [illegible] date of December 1,1975. Official announcements by the Department April 29 disclose the existence of thousands of [illegible] files within the purview of this action.

[illegible] to [illegible] is Mr. Wiseman's citation of Mr. Tyler's letter in which Mr. Tyler says that if I want what I asked for on April 15,1975, all the ballistics tests, I will have to [illegible] that this is not what I asked for and "make a specific written request to Director Kelley."

[illegible] distortion by Mr. Tyler and by Mr. Wiseman, what immediately follows is limited to any "new" request I might file by Mr. Tyler, despite the [illegible] misuse of it by both Mr. Ryan and Mr. Wiseman as their contrived explanation of their combined stonewallings: "If Mr. Weisberg wishes access to those of the ballistic tests other than the [illegible], clearly in my original request, he should make a specific written request to Director Kelley, attention Special Agent Thomas Wiseman, agreeing to pay both the costs of reproduction and the special search fees which will be necessary to locate and identify them as provided by 28 C.F.R...."

This [illegible] language is entirely limited to a "new" request I have never made and is not in any sense a proper basis for the failure of defendants to act on the original and amended requests and the Complaint.

(Jim- I'll bet Wiseman drafted that letter for Kelley's signature. Want to ask the judge to check and see? If this were the case, would she and we have something?)

Mr. Wiseman's following paragraph falsely says we "did not comply" with Mr. Tyler's clear and simple directions that plaintiff provide written assurance he would pay the fees..." As set forth above, Mr. Tyler's language is "clear and simple" in being restricted to an unnecessary request I did not and did not have to file. As set forth earlier the burden of C28 C.F.R. rested on Mr. Wiseman, who never met it by never telling me the cost of the alleged search, as required by 28 C.F.R.

That Wiseman opinion that follows is likewise spurious.

3[illegible]. The reference to "these records" here is a false one. Mr. Tyler's letter was restricted to a request there was no need to make and was not made, as set forth above. The requirement of 28 C.F.R. is clear and exactly as I represented. Mr. Wiseman's [illegible] is false because the Deputy's letter did not refer to those records to which Mr. Wiseman's affidavit does.

Mr. Wiseman adds an unsupported and unsupportable opinion, "...we have no need to invent 'protests' ...by delaying access to records which are in fact subsequently furnished." With the FBI under internal investigation, with it under investigation by both Houses of Congress, with a severe condemnation of the FBI issued by the Senate the very next week, and with the Ray appeal pending before the sixth circuit court of appeals, the opposite of this representation is obvious. It is also obvious that the attorney general [illegible] still another internal investigation that is [illegible] at [illegible] language.

It is likewise false that the records, whatever ones Mr. Wiseman may have had in mind without specifying them, have been "furnished."

3[illegible]. [illegible] of [illegible] Mr. Wiseman appears "irrelevant to this litigation." He has made two false representations: that the Deputy Attorney General demanded prior payment of search fees when his letter is restricted to that which [illegible] in any way, a request I did not make and had no reason to make; and [illegible] obligation under 28 C.F.R. for Mr. Wiseman personally and the Deputy to [illegible] search fees. [illegible] a [illegible] and unwarranted [illegible] than a decade long of keeping non-interest-bearing deposit accounts to pay these kinds of costs and [illegible] there has never been the basis for any such allegation nor the [illegible] without basis.

3[illegible]. Mr. Wiseman again undertakes to deceive this court about what Mr. Tyler actually wrote. As of the date of Mr. Tyler's letter, in which he had waived the search fees, I had made no additional request of any nature, as Mr. Wiseman knew then and knew when he executed his affidavit

35. Again the repetition of the same misrepresentation about search fees. Mr. Tyler had waived them. I had made no new request The FBI never did - even - comply with 28 C.F.R. by supplying me with an estimate of the cost.

When as he here does Mr. Wiseman talks about the cost "of the search necessary to locate the documents" at the end of a months-long and at least the fourth reported internal investigation, one wonders about what kinds of investigations there were about this representation or about both.

"Mr. Tyler's letter states this also," as it relates to the amended complaint. That is as impossible as anything can be. As of the time of Mr. Tyler's letter I had not amended. I had only just filed.

The question [illegible] other than FOIA Agent Wiseman states, "I know of no provisions of [illegible] the FOIA which additionally requires me to remind plaintiff's attorney of the contents of a letter which was sent from Mr. Tyler to plaintiff's attorney." The question [illegible] that [illegible] Mr. Wiseman's personal obligation under 28 C.F.R., which [illegible], [illegible] Mr. Wiseman never met this obligation and on tediously repetitious occasions in this affidavit is consistent in his misrepresentations of [illegible] and Mr. Tyler's letter.

"In the above-quoted sentence, plaintiff admits that he was put on written notice that written assurance was required." The "above-quoted sentence" is, "...Mr. Wiseman [illegible] my attorney to remind him that he could not process my renewed request [illegible] written assurance of my willingness to pay search fees..."

[illegible] such admission [illegible] interpretation [illegible] kind. In the [illegible] Mr. Tyler's letter of December 1, 1975, he explicitly waived all search fees, as he is empowered to do, and no new request was involved, as the sentence prior to the one used out of context makes clear, "...my attorney wanted all the documents which Mr. Tyler has eliminated from my original request." I know of no provision for the government to rewrite any person's request and Mr. Tyler has not seen fit to contest this description. With the fees already

[illegible] nothing at issue besides "my original request," there is not and there cannot be any basis for these Wiseman allegations and interpretations any more than there is for the elimination of what is essential to this court's understanding of what he [illegible] addressing.

Incredible as it may appear, Mr. Wiseman's next opinion is that "any further argument [illegible] irrelevant." This is to claim that unless an [illegible] litigant is prepared to admit that when the FBI says up is down up in fact is down there [illegible] he is [illegible] that he is, [illegible] "[illegible]" and [illegible].

[illegible] Mr. Wiseman [illegible] affirmations. They are not relevant to Mr. Tyler's letter, his alleged basis. They misquote and misrepresent it in ways that can not be assumed to be accidental. Consistent with this he has entirely distorted what I actually said by eliminating the part that is essential to [illegible].

[illegible] not [illegible] of [illegible] self-[illegible] he follows immediately with a quotation from 28 C. F. R. [illegible] he also seeks to distort by adding false emphasis. Using this as he did, he still was not able to eliminate the operative language, "The requester shall be notified of the amount of the anticipated fee." Mr. Wiseman, personally, had this obligation. I, personally, discussed this with Mr. Dugan after the first calendar call in this case on February [illegible], 1976 and asked for this estimate or in the alternative any reasonable sum to put on the face of a check. <u>At no time thereafter did Mr. Dugan or Mr. Wiseman or anyone else notify me or my attorney "of the amount of the anticipated fee."</u>

Quite aside from the official positions of both, which in and of themselves are enough to be [illegible] here, both knew of this legal requirement because it is in Mr. Wiseman affidavit and Mr. Dugan filed it in support of his memorandum. There thus is no possible question: both knew and both made deliberate misrepresentations to this court to attempt to justify a denial of my rights, to frustrate the law, and to delay compliance with it more than the year that I had already been delayed.

With both I believe and therefore aver a deliberate intent and a complete lack of innocence.

This deliberatness of intent is further compounded by what Mr. Wiseman next swears to, "in our letter of March 9, 1976, that we were unable to furnish an estimate of the special search fees that might be incurred,'...' But the language of the 28 C.F.R. Mr. Wiseman quotes in this paragraph also addresses that in two separate clauses, "or such portion thereof as can readily be estimated," and in the next sentence, which says that the requester must be "notified of the anticipated cost."

It is totally and likewise deliberately false to say, as immediately follows, "neither plaintiff nor his attorney objected to this," this referring to "our letter of March 9, 1976." I never spoke to Mr. Wiseman until March 23. I did speak to and did object to the failure of the government to abide by 28 C.F.R. in conversation with Mr. Dugan, my first opportunity for that being the occasion I used, February 11, 1976. This is in my affidavit, is uncontested and can't be contested.

It is also obvious that when I had given the unnecessary assurances a month earlier and had received Mr. Dugan's promises of his "good offices" with his client he with what now appears to be ample justification he said he could not control, questions of good faith do not rest on plaintiff or his attorney.

It is less than faithful to say "the fees were finally paid without protest at the March 23, 1976 meeting." We have from the first reserved our right to seek the return of these fees. One of the more glaring reasons is that the identical search was supposedly going on at the exact same time for an internal Departmental investigation. This had been amply reported in the press earlier. Reserving that right is not "without protest." Moreover, it was not possible to pay these fees at any earlier time because Mr. Wiseman never communicated them to me. There is no contrary allegation in his affidavit. The fact is I have never received any letter from him. It is also a fact, as Mr. Dugan knew, that my attorney would be away for a week beginning about the time he could have received "our letter of March 9,1976," and I was away the following week. Prior to leaving my attorney arranged with Mr. Dugan to confirm to me the date of this meeting of March 23 because I was to be away and was away beginning the early morning of the next week, that of March 14.

36. This draws still thinner the phoney interpretation of what Tyler's letter said, even was about. So I don't"really want" this "material." And I'm responsible for the three months of delay. And I suppose I'm responsible for Wiseman never being free when we knew I'd be in town.

This "additional material" is "additional only because it was not provided earlier. It is not new in not being included in my first request. All of it, little that it was, was in this request. They had merely deliberately withheld it and then pulled this stonewalling with Tyler's rewriting of my request to eliminate what could embarrass DJ and FBI. To this he added a new formula for suppression:"There can, of course, be no denial of access where there is no record; there can be no appeal where there has been no denial of access."

37. Wiseman says nobody has denied me anything that was "within the scope of (his original request," and he says he explained it. That he gave me a single paper March 23 is abundant disproof. That more is missing is further disproof. I gave Wiseman plenty of indication of withheld material and the mere bulk of what was officially announced 4/29/76 is overwhelming proof of the purposefulness of this false swearing.

His representation of Jim's call of 12/22/75 is totally false. We asked no search of him. Tyler's letter indicated that certain relevant pictures had been collected. I asked Jim to call because I was going to be in Washington. All we wanted was to be able to see what had been gathered. (I later made this same request of Dugan, who promised "good offices" and thereafter never did a thing.) If these pictures had not been gathered there could have been no search. There wa no demand for an overnight search and how could this possibly be alleged with regard to a request of eight months earlier?

38 answer the "gratuitous merging" with the new Civil Rights memos on it.

He admits the obligation "to make every reasonable effort to comply completely " and provides proof of refusal. WFO files is one. B'ham another. Not another word on pix after I tell them some of what they have. Not one of the documents mentioned in those few provided 3/23/76. None of the masking eliminated even when he knew he had to.

There is what seems to me to be a new preposterousness in this fabrications smeared with sanctimony. He is actually swearing falsely about what may not even be covered by 28 C.F.R. I read the quotes he uses to apply to requests only. Beginning 11/28/75 this was no longer a request. It was a case in court. There is no possibility of a claim not to be able to collect with a judge to order payment.

39. All is irrelevant to the bureaucrat determined to frustrate the law. My paragraph deals with completed investigations in which these records have to have been collected. Now still another can be added to them. There could not be any investigation of this crime without collection of the evidence dealing with the crime. Yet the claim is now made that this was done not less than four times - four investigations and no collection of the basic evidence? When respondent brags in public about numbers of records totalling more than 200,000 and separates a special category limited to its new "investigation" of the crime and **after** this allegedly complete search puts the total of documents at well over 2,000 and gives me only a few pages - pages that prove the existence of the still withheld - there is no irrelevance in this paragraph and there is no honesty in the alleged response.

41 We can ignore but I'd remind of the lie that we did not offer to help locate missing records of that he needs any help. Ridiculous after yesterday's announcement.

42.The misstated question is with a long record of lying and then of the agents who performed the tests sought quitting when faced with the possibility of having to testify under oath, with the vast amounts of obvious withholding in this case, a record of lying to withhold is not irrelevant. Nor is Wiseman's failure to make even pro forma denial while making imputations about "plaintiff's good faith in this litigation."

44. As specified earlier, it is false swearing to allege that my request was "never effectively received" until the 2/23 letter. Were this not true, as it is, it would also be true that each and every Wiseman word relates to the initial request, not

including the amending, it is apparent that he knew this to be deliberate false xxxxxxxxx. swearing. In even his formulation and relating to minor evidence. Wiseman knows that he did not comply with my request because he provided further "firearms examinations" 3/23/76

47. I'll have a classic example of the FBI's report-writing for you if you want in an affidavit, with documents to attach. Off the top of the head, in O in NO, the field reports on Oswald getting his literature printed say it was not Oswald and as rewritten in SOG it came out as Oswald alone. The same is true of the first interview with Connally. He said he turned and saw three buildings, as the back-channel FBI records show, but as given to the Warren Commission this was rewritten to make Connally say he saw but one building, the TSBD, natch.

In this series of non-responses they argue that I do not have the right to prove non-compliance. It is that simple. And that they have the right to prevent me by refusing to answer proper and justified questions. It would have been less trouble to respond than to resist response, particularly when the same defendant represented by the same Office of the United States Attorney, has gone to another court and, if frivolously and spuriously, there alleged that I failed to exercise discovery. They want it all ways but never to permit proper and necessary questioning of their false representations to the courts.

The dates are meaningless because the dates provided can't be accurate and complete and because we have evidence of testing much earlier of which no single copy has been provided.

Prior to the filing of this affidavit the district court had ruled there is no such privacy (I gave you a clipping on this) and in fact this is the first time this same defendant has masked the names of those doing the tests. The reason is obvious- to make it difficult if not impossible to discover proof of what is probably perjury.

This is part of a new means of trying to shift the burden of proof onto requesters, then denying requesters the capability.

On compliance, search, affidavits, etc. You will have the official statement on the new investigation and the Times story. Today's Posts is adequate except that I think we might want to include quotes from Crewdson's. This, of course, also relates to search fees and trickery involving them. Pottinger said his own review was of about 3,500 documents of Justice and FBI and he estimated there are about 200,000 documents scattered in field offices. This goes great with that jazz about the crumbling of the Bureau if those field offices were to be tapped and fits fine with Williams, who I think we should use to show that these lies and deceptions are the norm. not living with the law.

In 52 he says , when he has to evade,"I do not feel it is proper to attempt to set out law instead of facts in an affidavit." But in 51 instead of facts he ~~xx~~ tries to set out ~~fx~~ law in a spurious invocation of a non-existing right after the courts have held opposite his claim.

Using Pratt where it is irrelevant and defamatory and out of context in answer in 52 without using the decision that is pertinent, on non-privacy for government employees in such matters, is not setting out non-existing law? But if he wants Pratt is this not a good point for giving the two sides of Tilty's mouth under oath?

This is perhaps a good point to let the judge know that in that case compliance was sworn to with the delivery of a few pages and still another ~~xx~~ rewriting of my request to eliminate most of it, again after I had filed in court for what they then claimed I did not want. In the end, still without compliance, they gave me about 20 times as much as they had when they first swore to compliance.

I think we want to get in, with his use of Pratt providing an opportunity, what they use contrived meetigs for, our effort to have a record , their refusal, and then their bland and false ~~xxxxxxxx~~ pretense that I had abandoned my suit after filing. This is on the claim that I said I wanted no NAAs.

56. The allegation of false representation by me is known to the ~~FBI~~ defendant to be false. This evidence was adduced in open court, subject to cross examination, in a case in which the Department does have some court records. That it does not have these cannot

easily be believed with the nature of the testimony and of the case and the magnitude of the acknowledged files virtually all of which are still withheld.

56. By here he is so programmed to claim "no factual support" that he even alleges a court record is "no factual support."

57 When we produce sworn, competent testimony never challenged his computer shifts from "no factual support" to "No factual response is deemed necessary." But the very purposes of all of this are to establish compliance, motive of and fact of non-compliance, and what records exist and were not produced. This testimony has the clear and relevant purposes of showing that other records have to have existed and have not been provided.

58 That they were not ready to go to trial with the evidence required for trial at the time of trial is not relevant to whether or not they comply, whether they withhold what they have to have had ready at the time of trial? May be a good idea to check FBI handbook on technical experts.

59-75 Is it not contemptuous to allege thatt these interrogatories can in any way be described as "my belief that the purpose of this FOIA litigation is not to judge Mr. Ray's guilt or Mr. Weisberg's scientific knowledge?" In each and every one, and I have just read them, there is not anything that can be described as "for the purpose" of judging "Ray's guilt." Each and every one is explicit in explaining only what is sought by the interrogatory, the basis for it and none is not for the purpose of establishing compliance or non-compliance, the very issue in this case at this time. He is qualified by himself as an expert. I believe this therefore constitutes false swearing.

75 I'd ask if he has personal knowledge that permits him to swear that I have been given all photos and reports of and on the windowsill. If he has no such knowledge, and he told us he has no first-hand knowledge, move to strike as irrelevant, incompetent. Besides, as indicated in the interrogatory, I have knowledge of their having other pix, fro m the Memphis police. Cobclusions drawn from evidence, contrary to his claim they

"have no bearing whatsoever on the subject matter of this litigation," are essential and relevant,xx made more so, by his refusal to answer a single question addressed at determining compliance or non-compliance. Here again he argues law instead of answering proper questions, although elsewhere he claims it is improper for him to argue law. Whatever he can mean by his unexplained concept of "the subject matter of this litigation," it cannot exclude getting the records asked for. The purposes of this interrogatory quite clearly are to show that other relevant records have to exist, that there is reason to believe they do exist, and that they have not been supplied. At this juncture the issue is compliance, hence nothing could be more relevant. Refusal to state the number of pictures, which is a simple matter if there has been a search, can be explained only by a fear that to do so would be to prove non-compliance if not false swearing, too.

76 he pretends that "comparison microscope" photographs, the sole subject of this interrogatory, are what he knows is false, "photomicrographs." The fact is thatxx that he is so evasive he does not say whether these were taken. The taking of individual pictures through a microscope is not in any sense the same as taking comparison pictures and as the interrogatory states on the best authority, there is the official representation that the evidence exists and is in the possession of the FBI. He calims the question is irrelevant. If it were irrelevant, the simplest way of establishing this would be to respond, quite simply, by saying no" ~~phto~~ photographs of the bathroom windowsill or the alleged murder weapon were taken with the aid of a comparison microscope.

These, not his, are the actual words of the interrogatory.

77 I'm not taking time to check but the best that can be said for his answer is that the report of 4/11/68 to Memphis was not provided until after we filed this interrogatory. However, I do not recall that it is responsive to the interrogatory about recoil or other class of cause, like hammer. We discussed this 3/23 and I asked them how an agent was to withstand cross-examination without this kind of evidence. They had no asnwer except Kilty's regular allegation of my scientific ignorance.

78 What he cites from the Birmingham charge is in no way covered by what was

allegedly sais by the Aeromarine people. All they said is that Ray said he was going hunting with his brother. The charge says,"...and an individual whom he alleged (emphasis supplied) to be his brother, entered into a conspiracy which continued until or about April 5, 1968, to injure, oppress, threaten or intimidate Martin Luther King,Jr...."

There is or is not evidence to support this. If there is I am entitled to it. If there is not then I am entitled to a statement by someone with first-person knowledge that there is none. Surely one is within reason in believing that the FBI does not file spurious charges or file cases without evidence of any kind or destroy the evidence after the filing of charges.

The mere filing of the charge has to establish that there was at least one other suspect, otherwise there can not have been a conspiracy charged. In this case the charge is partial identification of the other suspect, an unnamed brother.

On this basis alone there is proof of other suspects. The law does not provide for a one-man conspiracy.

In pretended response to my truthful assertion that I provided a picture and a sketch to the FBI, he says they don't have it but "we located all records in our FBIHQ files which are in any way responsive to plaintiff's request." He provided not one of these "located" records. And if as he alleges there never was any other suspect, how can there be any records? Yet he swears to having "located" such unprovided records.

Here he is also swearing to a complete search of Hq files without turning up the public statement made by the Bureau on another suspect, a published statement having to do with the publication of a sketch.

As it happens there was a witness to my providing the FBI with this picture and sketch. The agent to whom they were given is Ronald Lichtinger, who resides where I do and has his office in this same town. The delivery was made through the editor of our local afternoon paper.

In another proceeding there is uncontested sworn testimony of FBI interest in this as of a much later time. There also was last year when it was publicly reported and was used in an official proceeding. Or, the perjury and the intent are clear

if an affidavit has any purpose.

If "we" does not include Wiseman, then the affidavit is incompetent.

Any providing of any records covered by the Com laint can't be considered going "beyond" what is required by FOIA, his allegation here. We can't let that go uncontested or they will have a permanent license to suppress.

However, when the search did not turn up what any agent knows they have to have, is it not deliberate non-compliance not to search in obvious files for it? I think so. My interest is not in the file from which any public information comes but in getting that information the right to which is assured me by law.

Rather than as he represents, that I refused to be helpful, I told him where there are such sketches and pictures, and restricting only to a refusal to disclose what could be interpreted as meaning the extent of what I knew for the stated reason that if I did this I could expect to get only that which I disclosed knowing about.

But the law does not impose the burden of proof on me and they do have these records I here specify and they are not all.

79. In this non-response Mr. Wiseman remains non-responsive by ignoring the subsequent records which are not limited to his formulation. Contemporaneous press accounts that to the best of my knowledge have not been publicly disputed by the Department of Justice did report the finding of cigarette remains in the car. And I have examined such remains in FBI containers, with FBI lab markings on them. The FBI's problem with this, which can perhaps account for Mr. Wiseman's failure to be responsive, is that Ray is a non-smoker and the FBI pretends he was all alone. That Mr. Wiseman ignores the clarification of the request cannot be because it either was not clarified or because he is unaware of it.

80. With this admission that I have not been provided with full reports on this there thus is an admission of non-compliance by the very man who has sworn to full compliance and that more than two months after the government announced it would move mootness from compliance.

Jim- I think we should include a quote of the request as amended. If you did not do it I did in correspondence. You might also repeat that their list from Atlanta itself is incomplete, the second saying there is more. They managed to give me that one stapled together the wrong way perhaps in an effort to hide this incompleteness.

I had been under the impression that the acknowledged remains were found in the Atlanta flophouse from what they had said. I believe Hanes' notes say they were sent to New Orleans. In any event, this reference to a New Orleans apartment is a fascinating new detail we must keep in mind. We must now press for every shred of information we can get on this. Don't be surprised if that apartment is in the building I located and photographed and be ready to make a few references to it. It may surprise these scum if that is correct. They'll then be wearing the Whitey hat, not white hats.

81. There is no basis for the allegation that is non-responsive, that this interrogatory is "once again attempting to adjudge James Earl Ray's guilt in this FOIA litigation." Were it material the opposite would be the case in any event if he had been part of a conspiracy. The FBI did charge conspiracy. It, not I, found relevance in these cigarette remains. I suggest that it would have taken less time to provide those reports rather than to undertake to deceive the court about them. It is further false for Mr. Wiseman to pretend I did not request this. I did in the clarification of the request and in person, with Mr. Wiseman on March 25, 1976.

This, of course, also gets the the FBI's refusal to permit the making of a record of such conferences. They always manage to have more FBI preople present and see to it that at best there is a dispute as to what transpired, with them consistently taking positions that are illogical. The cited example from C.A.75-226 is pertinent. In that case they actually claim that I did not want what I filed suit for.

82.Typical of all of this non-responsiveness and deception and misrepresentation is the resort to semantics here. It hinges first on the word "located." When people without first-hand knowledge are selected to make the searches and when the wrong files are searched and the right ones are not, naturally what is called for is not "located." I personally told Mr. Wiseman what he did not have to be told, what files

should have been included. This, of course, is separate from their ignoring existing files in the Department of Justice. I can give a list of these that do exist from records I have and from which Mr. Wiseman has not provided a single paper bearing these file designations. My list cannot be complete. But I can give it, together with samples of records bearing these designations. I can also provide correspondence involving the late director that has not been provided. It can't be believed that Mr. Wiseman can't have a search that avoided the late Director's personal involvement and seriously pretend that he has made or caused to be made what reasonable people can call a genuine search. This extends to what Mr. Wiseman pretends does not exist, the Bureau's relationship with the other writers specified, my 1969 request to which there never was any response.

It simply is not true that I "offer no factual support." Mr. Wiseman, whose affirmation is entirely without factual support and is based upon his second-hand allegations only, knows better. We did discuss this March 23. The interrogatories here in question relate to pictures of the scene of the crime. The court suggested that the government make another search on this during the March 26 calendar call. Here we have Mr. Wiseman executing an affidavit almost a month later without reference to what the court then directed. I told Mr. Wiseman that if I were to tell him those pictures of which I know his renewed search would produce no more than those I specified. I also told him I could described the contents of dozens and provide identifications of the film itself. He may not believe me but it is a false statement to represent under oath that mine "is an unsubstantiated claim for which he furnishes no factual support, although he has been offered numerous opportunities to do so." I also discussed this in Mr. Wiseman's presence with the representative of the Office of Legal Counsel and in my presence Mr. Lesar ridiculed both about this representation, that the vaunted FBI did not have a single picture of the scene of the crime in its self-described second largest investigation in its history.

So this court can better evaluate the character of these FBI representations I quite from the FBI's own published <u>Handbook of Forensic Sciences</u>, available for $2.00

from the Government Printing Office:

II. Photography at crime scene - photographs should supplement casts and lifts:
A. Photograph general crime scene area.
B. "Photograph showing positions of individual items of evidence within the crime scene area.

Other instructions at this single point, page 95, include the use of a tripod, "Polaroid not recommended;" the use of a ruler and identification label; the use of flash equipment, etc. (Emphasis in original.)

In this case the FBI went even farther. It created a mockup of the entire scene.

In this case also there is the here-relevant deception of referring only to "jurisdiction" in the sense of the ultimate prosecution. (There was an FBI federal conspiracy charge.)

The FBI assumed control of this case almost immediately. Then Special Agent in Charge Robert Jensen testified under oath March 10, 1969. He then swore that he was notified about this crime four minutes after the shot was fired, immediately "called my Washington headquarters" and immediately "dispatched men" into the investigation that for all practical purposes thereupon became an FBI investigation.

(There is no single record provided from the agent under Mr. Jensen who was in direct charge of the FBI's investigation, Joe Hester, nor from the agent in charge of the Cointelpro program, now a college teacher. There has not yet been any response on the Cointelpro Memphis operation which, like the content of some of the FBI's picture I have seen, can be quite embarrassing to the Bureau.)

Such pictures are not exempt. The FBI has them. Mr. Wiseman knows that the FBI should have them. He qualifies himself as a trained FBI agent. Surely this training includes not less than what the FBI sells the general public. But when he addresses these things at this point he does so evasively, limiting first to "located (my emphasis) in our Memphis Field Office" , then to "non-exempt," as pictures of this nature cannot be and then still further to both one of the several requests and to some date in the future that is not in accord with Mr. Dugan's commitment of March 26, within 30 days.

83. Absent some special interpretation of "can be identified as such in our records," this response is plain falsehood. The FBI is publicly credited by authors in their published books. Some of these authors have flashed copies of FBI reports when interviewing witnesses mentioned in those reports. And I have government records identifying FBI officials who did engage in these kinds of meetings with writers. If Mr. Wiseman's "search" did not disclose this then obviously he neither conducted nor intended anything that could be called a search.

Even his reference to showing the so-called extradition papers to Mr. Bernard Fensterwald is not true. They were shown to me on two different days. On the second day I took Mr. Fensterwald with me. But they were shown to me and the arrangements for this were made by me, not Mr. Fensterwald.

The citation of Mr. Lesar's suggestion is out of context. However, Mr. Wiseman does not mention asking the proper FBI people. They are well-known enough outside the Bureau and the search is to have been made inside the Bureau.

Because of Mr. Wiseman's representation of a "massive and detailed review" in this interrogatory alone and because of the impudence with which he feels impelled to make non-response, it might be informative to the Court if he were asked to specify which files were included in this claimed "massive and detailed review" of the "all [illegible] FBIHQ" files. To my knowledge the officials who filled these roles are well known. To my knowledge there are references in the Director's files. To my knowledge there are references in Departmental files. If I know these fact the court can understand that not less than what I know is available to Mr. Wiseman and reasonably certainly more is.

His impudence lies in the gratuitous suggestion out of place when coming from a stonewalling respondent in a Freedom of Information case: "It is suggested... that he make inquiries of the individuals he names..."

Plaintiff did not name all. Plaintiff has what those authors who have published have written. Plaintiff also has published FBI bum steers, like the suggestion that the alias "Eric Starvo Galt" comes from the writing of Ayn Rand when the Bureau knew this to be false. Plaintiff's request, the propriety of which has not been contested, is for

the Department's public information on this. Other parts of the Department have found and delivered incomplete records of contact with these and other press people, so it simply is not true that the FBI has none and it is likewise not true that the FBI could not find any.

85. The "response" here is a frivolity or worse. Any search of the files would at the very least have come across references to this request as they should of my own writings on it, copies of which have been produced by other parts of the Department. The government buys my books, including directly from me. It is not necessary for me to provide proofs if there is a legitimate search. As I told Mr. Wiseman, experience teaches that if I specify what is belatedly "found" is limited to what I specify. However, the Act does not impose the burden of proof on me. It is with respondent, whose agent Mr. Wiseman is.

It requires no further description of Mr. Wiseman's purposes when he deceptively described this particular interrogatory this way: "...unsubstantiated and have no factual support..." The language of this interrogatory is quite specific and if there had been good intent by respondent constitutes good leads for a further search:

"Two of these writers credit the FBI in their books. One writer reportedly has shown a doctor copies of FBI reports on what that doctor told the FBI. Another writer has obtained copies of the bank records of Mrs. Carol Pepper, James Earl Ray's sister. Still another writer could not possibly have not had the FBI as a source for his early writing on the Ray case."

With regard to the letter, the jailed Ray's private correspondence on this was intercepted and xeroxed and some of it is public domain in a case on which the Department has files. It is not an easy matter for writers to obtain bank records but the FBI does do this, as now is well enough known. Mr. Wiseman and others in the FBI can check files and indices beginning with the letter "P", as he does not represent having done.

There is no honest way of describing an interrogatory containing these specifics as "unsubstantiated" or "with no factual support furnished with them." Nor can it honestly be sworn to that these writers have "nothing to do with the FBI " when, as the interrogatory

itself shows, they had very much"to do" with the FBI and as the fact is, printed what the FBI wanted printed.

84. The Wiseman variant of FBI semantics here is transparent. Naturally he offers the "entirely unsubstantiated" opinion that nothing is relevant. And naturally he limits and qualifies this last non-response to "all FBIHQ files pertaining to our investigation regarding the assassination of Martin Luther King, Jr."

Even after 22 pages of this it seems incredible that an FBI FOIA/PA officer, in supervisory capacity, too, would be able to distinguish between allegedly "investigatory"and overtly propaganda files. The one place one would not expect to find public records of the FBI's propaganda operations would be in investigative files.

In the end Mr. Wiseman discloses the method of the FBI's non-responsiveness, there having been not a single real response to any of the 84 interrogatories; He searches the knowingly wrong files.

And this, of course, gets back to the Deputy's schema, what they do not find can't be produced or appealed.

In turn, this is a formula for the executive branch to nullify an act of Congress unless the courts prohibit and punish it.

In V Mr. Wiseman alleges without specifying what he may have in mind that plaintiff seeks "information which does not consist of 'identifiable records.'" Plaintiff believes and avers that there is nothing in his complaint and amended complaint that is not an "identifiable record" and seeks specification instead of "entirely unsubstantiated" allegations.

While it is perhaps a less unrrasonable interpretation that has been found on so many of the preceding pages, it is still not really accurate to allege that plaintiff requests "the identities of certain FBI personnel." A more accurate formulation would be that the FBI give plaintiff undeformed and unaltered public records of which he has been provided altered copies. There is the directive of this court of about a month prior to the execution of this affidavit that all masking be justified. To date it has not happened. This is the first time the FBI has masked the names of

in non-secret lab personnel engaged in non-secret work. (Consistent with this it has also masked the names of witnesses that have appeared in public and have been cited with their full names in public proceedings; the names of publicly-known murder victims; the names of publicly identified- by the FBI itself agents - who were no more than couriers.

This false claim was alleged after the federal district court in this jurisdiction held to the contrary, and if anyone should know this it is respondent who filed this contraption, if not the affiant himself.

There is the likewise false and likewise unspecified claim that "The interrogatories also request information which has to be created, inasmuch as we do not possess this information." Mr. Wiseman is careful not to use the word "records." The purpose of the interrogatories is not to produce the records themselves. Interrogatories are a discovery process. The "information" in response to them, which does not have to be records, also does not have to be "created."

Even here the deceptive intent is unhidden. While this request was amended in accord with the Federal Rules, while a Complaint was filed, he refers only to "his April 15,1975 request," whatever his personal interpretation of that "request" may be.

It is an intended misstatement of fact to swear that "answers to most of the questions propounded in the interrogatories are contained in the material we have already furnished plaintiff." The simple, street-language response to this is "put up." Plaintiff believes and therefore avers that if this were to be required of Mr. Wiseman it would become obvious that this is a direct and purposeful lie under oath.

VI is explicit in declaring "We have interpreted the FOIA as conferring a duty upon the FBI to furnish a sequester all reasonably identifiable, non-exempt agency records in our possession..."

The law does not include Mr. Wiseman's evasion, "reasonably identifiable." Reason and he, from this affirmation alone, seem to be strangers. The law's language is

"identifiable," withlut ~~the flexibility of wh~~

"identifiable," without the flexibility of whatever may be "reasonable" to Mr. Wiseman of others with a vested interest in suppression of public information and non-compliance. Mr. Wiseman has identified himself as a supervisor but not as an expert on "reason" in any event.

When names published in the multi-millions of copies are masked in what Mr. Wiseman personally has give plaintiff, and when more than a month after he has admitted the unreasonableness of the masking he had not replaced those masked copies; and when the court directs a justification not xxxxxxx provided after a month, xxxxxxxxxxx xxxxxxxxxx there is a more dependable measure of respondent's intent to comply or not comply than Mr.Wiseman's self-serving representations - with or without his subtle escape hatches.

Perhaps the best measure, of compliance and intent, is the fact that he has delivered fewer than a hundred pages when the Attorney General's own deswcription of the total files is of more than 200,000 documents, many more pages. Or in the Department's description of the FBIHQ files as holding 3,500 documents, many more pages.

In saying "to give the requester an opportunity to avoid payment of substantial special search fees," Mr. Wiseman appears to have had in mind $141.00 in such fees for 18 pages of masked records. There is a more painless way of avoiding search fees- not to make any request. But once a request is made, is clear and understood, it is neither Mr. Wiseman's function nor that of any other person in any agency to decide for a requester whether he wants what the Mr. Wiseman's decides to describe as peripheral

This pretendedly tender concern for citizens, in Mr. Wiseman's unit, is in plaintiff's experience unique with Mr. Wiseman. His associates have rewritten the law to deny requesters a chance to examine records to determine if they are relevant and have ordained, Congress or no Congress, that the requester has to buy the copies they select or get none at all.

If plaintiff had any need for others to "conduct" his "scientific and/or historical research for him, " Mr. Wiseman's words. from plaintiff's personal experience the last place

place to which he would turn is the FBI FOIA "Freedom of Information" unit. The mere suggestion is insulting without basis. It may represent a bureaucrat's attitude toward an enactment by the Congress, especially bureaucrats who have lived with a belief in the unaccountability of functionaries in a representative society. It has no factual justification. Requester's request and complaint are comprehensible and specific enough. In neither is there what the reasonable mind can interpret as a request for aid in research of any kind.

All of this is cloaked with less grace when it is recalled that Mr. Wiseman, personally and under oath, deliberately misrepresented both the law and regulation and even the language of the Deputy Attorney General and based upon this flimsy contrivance delayed his fig-leaf of compliance for months to extort unreasonable search fees, $141.00 for 18 heavily or entirely masked pages from files not smaller in extent than 3,500 documents, whether or not these include those of the late Director - and not including those that are encompassed by the request, the admitted 200,000 more in the various field offices. If the FBI could sell its files at this rate, the budget would be balanced.

VII Plaintiff, prior to the beginning of the new investigation announced by respondent April 29, made exactly this demand on the Attorney General in a letter Mr. Wiseman has not seen fit to quote/or misquote. Mr. Wiseman did not, perhaps, on and before April 21, anticipate this eventuality on a higher level. But when there are an admitted 203,500 documents, not pages, as the official statements do declare, it is apparent that "The FBI is "not "being placed in the near impossible position of attempting to prove a negative." With a wretched 18 pages out of 203,500 documents (other than the skimpy few more from the lab) the laboring mountain of the FBI has yet to produce a mouse.

Neither Mr. Wiseman nor anyone else has yet to claim that the request is not understood or is ambiguous or is not for identificable records.

Plaintiff believes and therefore avers that with these admitted 203,500

documents it is not possible to make any request that should not produce more than 18 pages and that the affirmation "we simply do not possess the records" is false swearing that is perjury.

Plaintiff has, in fact, specified f rther records to Mr. Wiseman. Moreover, plaintiff has obtained from the Department of Justice copies of relevant FBI records neother Mr. Wiseman nor anyone else in the FBI has provided, despite the direct quotation above. This production by the Department, while woefully incomplete and on the face containing proof of further withholding, nonetheless is absolute proof of the falsity of this swearing.

Here Mr. Wiseman did not use his characteristic semantics and evasions about what is included in the request or what may or may not be exempt or what someone else told him. He is explicit in the material falsity under oath,"we simply do not possess the records."

There are other and obvious proofs of both the falsity of this swearing and the deliberateness of the intent. Mr. Wiseman has not even produced the acknowledged request by plaintiff of 1969.

With incomplete knowledge, plaintiff can produce about a half-dozen file numbers from which Mr. Wiseman has yet ti produce a single sheet of paper.

There were three boxes of FBI indices delivered to the Memphis prosecutor. Mr. Wiseman has not referred to these. He has not offered access to them. He has not asked plaintiff if he wants them.

Perhaps the reason lies in the problems the Memphis prosecutor also had in obtaining FBI records for his prosecution, from which he sought relief by beseeching the Criminal Division. But it is a fact that there are three boxes of FBI indices relevant to this proper request and from them not a shred of paper has been produced.

When under oath Mr. Wiseman refers to "all information we could locate" and plaintiff, not from Mr. Wiseman, has the proof of these three boxes of indices,without regard to the rest of those 203,500 documetns it is on this basis alone apparent that

there is deliberate false swearing about the material and an intent to nullify the law and overwhelm the courts with burdensome and entirely unnecessary work.

An equally transparent and equally deliberate added false swearing follows: "and we had done this before we were notified by the Department of Justice that plaintiff had instituted this litigation."

Few as 16 pages are compared with 203,500 documents, the fact is that even this pittance of paper was not provided until March 26, 1969. That is four months after the filing of this action. And the filing of the action, rather than being in haste, plaintiff deferred from April 15 to November 28, 1968. The time difference is almost a full year.

It likewise is a false swaering to the material for Mr. Wiseman to conclude with "There is nothing more we can do in response to plaintiff's request" rxcept for his carefully-hedged promise of the pie in the sky of whatever he opts to make available of the Memphis Field Office files. No pictures of the scene of the crime. Nothing of the Washington Field Office files. Nothing of what continues to be suppressed from the main FBI files - and God alone knows what percentage this is of the officially admitted 3,500 documents there. Nothing of the officially-admitted 200,000 other documents, not pages, in the other field office files.

The deliberateness of all of this is illustrated by the false affirmation that if these field office files were to be searched in response to a proper inquiry the FBI would collapse into an impotent shambles. Yet exactly this has now been ordered by the Attorney General, who seems to be less concerned with the imminent demise of the FBI.

The source of the public information sought is immaterial to plaintiff. If they come from the late Director Hoover's personal stash or from any other repository it makes no difference. Plaintiff's sole interest is in obtaining the public information he seeks despite Mr. Wiseman's repeated misrepresentations and improper attribution of contrived and false motive. If there could not be full and complete compliance from the

now admitted 3,500 documents in FBIHq, given a willingness by the law-enforcers to abide by the law, that would be surprising.

Alas for Mr. Wiseman, the decision to announce the extent of the relevant files was made after his affirmation and the announcement was made eight days later. However, the official announcements leaves no doubt that the representations of the United States Attorney's Office and ~~the affidavit of~~ Thomas Wiseman are false.

Jim- at some point, with the AG and Pottinger having skinned Wiseman and Dugan in particular, with the transgressions so apparent and proven, I think we should in court make a Vaughn motion and a prayer for relief for both of us from these repressions. When DJ admits 3,500 Hq FBI documents and 200,000 others in the field offices and we get so few pages, even a Pratt would have trouble. Green is not a Pratt. And this, if forced, official admission of the extent of the records, really is a killer.

Note, friend, that the Field Offices are so much more extensive than Hq. Not only for this litigation but as a generality. It is their dodge blown. If they chose to file outside of Washington, that is and should be their problem, not a means of escaping the purpose and intent of the law.

Nice situation. They keep about 75 times as much out of SOG in their arbitrary filing system (easily retrieved at taxpayer expense if SOG wants) and then bleat that they'll be ruined if they have to go to these field office files.

They have given us Wiseman as a goat for the slaughter. Green has been often and extensively abused by these dirty tricks. Here I think they have blown themselves. I think it would not hurt us, the law or its viability to offer him up as a sacrifice. He is a crumbum who has perjured and seeks to nullify the law and defraud us. I'd like him to be laying across the altar in the event she thinks it is time for a knife. If this happens - one time to one of these wretched ones - it may deter the others.

Kilty Affidavit

In II he/limits himself to the unamended complaint months after amending.

Is there a material difference in "would be" as distinguished from "is" in "responsive to plaintiff's request?" I think so.

III I have asked nothing of the FBI's lab's "procedures." I have asked for records. If they did not do what is commonly done it is a separate, simple matter for this expert to so attest.

Rather than asking me about those irrelevant procedures he delivered unasked lectures on my alleged ignorance. The law does not require me to be other than ignorant. But it does require him to deliver what I request under the law.

This is my second unsought meeting with him. The first led to a number of perjuries by him. To this day he has yet to deny he did perjure himself.

However, if he had asked me to ask him about these alleged procedures, that would still be irrelevant to my request. The fact is that none of this happened.

IV. His numbers to correspond to our interrogatory numbers.

He says he is addressing my affidavit but he addresses the interrogatories. In ways I can't follow. Here by reference to Interrogatory No. 1 under Interrogatory 40, with an "Item (A)" when there is none in my affidavit.

He has made a non-accidental switch here. The interrogatory asks "what kinds (note plural) of test" would be performed. He rephrases this into "Item (A) asks the type of examination (both singulars, note) and tests which would be used to determine whether or not bullet [sic] or bullet fragments have a common origin." This is not the language of the interrogatory. It also is not the sense. Our question is in terms of "whether there is an evidentiary link between crucial items of evidence." In any homicide "crucial items of evidence" is not limited to his rephrasings of the interrogatory. His words, repeat, are "to determine whether or not bullet or bullet fragments have a common origin." I have this interest, but it is not the language of the interrogatory, which includes more than bullets, or all "crucial

items

items of evidence." He restricts the interrogatory excessively, perhaps because of the [illegible]ing clothing.

In answer to the question, "what kinds of test," "elemental analysis is used" is not an answer. Unless he were to swear that nothing else is ever used. He claims to be an expert. He did not ask one test. We asked "what kinds of tests." To a judge and a layman "elemental analysis" is not a kind of test.

If in his use he means by "elemental analysis" that analysis of the elements in the nature of the testing performed, the means of coming to this information are not one only, a question he does not address. For example, it can be done by spectroscopy and by neutron activation analysis. HOwever, he does not say what he means by "elemental analysis." Neither does the Random House unabridged dictionary.

I did not ask what "our report would say." However, bullets are not composed of lead or lead alloys only, and in this case there was a copper-alloy jacket. If "our report would say that bullet A came from the same homogenous source of lead as bullet B, " I believe and therefore aver that he who so testified would have a little trouble with opposing counsel on cross-examination, for all Mr. Kilty's representation of his impeccable scientific credentials.

Differences between bullets are of such a nature that he can and anyone can say they "could not have come from the same box." There is enough difference between manufacturers and composition. Analysis can show that bullets are of different manufacture at the very least.

His representation of what I said at our meeting is a total and complete impossibility. I did not say this and I could not have. perhaps he would like the court to believe that there "were bullets left in the gun," but there were not and I have never under any circumstance said there were. This is a subtle kind of propaganda because the rifle is designed to be able to be reloaded by a simple device called a clip, but there was no clip found with this rifle and there not only was no other bullet" left in the gun," there was an empty cartridge case. Without a clip, there could have been and there were no "other bullets" that either

were or in fact could have been "left in th gun."

This gets to the purposes for which the FBI contrives meetings and then prohibits the making of any kind of record and refuses to record them itself for both sides.

I did not ask for Mr. Kilty to be present at the March 25, 1976 meeting. I had been under the impression it was the meeting with Mr. Wiseman suggested by the Deputy Attorney General in his December 1, 1975 letter, a meeting Mr. Wiseman had always found impossible on those earlier occasions on which I was in Washington. (This one was arranged by Mr. Dugan, not voluntarily but when Mr. Lesar, knowing I would be in Washington more than a week before the time, pressed for it.)

In a phone conversation to confirm the time, 1 p.m., I was earlier that day still led to believe the meeting would be in Mr. Wiseman's office. It turned out to be in the offices of the FBI's Legal Counsel when we were ushered there instead of to Mr. Wiseman's office.

At a point in this meeting Mr. Wiseman said he was asking someone else to join us. Mr. Kilty did, then, and in no sense because of any request by or for me. One experience with Mr. Kilty's undenied perjury (C.A.75-226) was more than enough. However, it seems that the Bureau insists on inflicting more than this perjury on me.

While without a tape recording, the one the FBI refused to permit or make, it is not possible to establish what was and was not said, in this case I can establish the impossibility of my having said what this undenied perjurer attributes to me.

In writing my book on the King assassination I did go into the total absence of a clip in this rifle, the irrationality of having a rifle with a repeating capacity and not using it, the illogicality of having no second shot in the event the first missed, the insanity of having no shot for escape or self-defense, and I came as close as I responsibly could in 1969-70 to saying it was impossible for this rifle to have been used in the crime.

Thereafter I had a number of confrontations with other figures on the other side of this case. Percy Foreman fled one in New City, one on which Arthur Hanes, Sr., remained. I have the tape. Then there was another, with the former prosecutor, the Judge Robert K.

Dwyer and William Bradford Huie. The last two were with Gerold Frank. Of these the first was on Boston Radio WBZ and the last, in May 1972, on TV in St. Louis, Missouri. Not only did I not ever say or suggest in these or any other public appearances what I also did not say in a long book that is heavy on ballistics anything like what Mr. Kilty with deliberate falsity attributes to me, I have always said the opposite. I can produce the tapes of these shows. One that will be particularly informative on this point is the first Frank confrontation and the contortions into which this total absence of a clip in the rifle drove him.

It is not possible that even by accident I could have said what Mr. Kilty says I did. The rifle in question was found without a clip in it, without Without the clip it was impossible, mechanically and physically - totally- impossible for there to have been any "bullets left in the gun." The possibility of a single bullet being left is ruled out. There was an empty cartridge case/ in the breech. In the absence of a clip the only place in which a single bullet could have been is in the breech, in firing position. With the impossibility generally recognized outside the FBI of two solid objects occupying the same space at the same time, it is certain that there also could not have been a single bullet "left in the gun."

Why Mr. Kilty swears to this lie, this total impossibility, I can't imagine. However (in his II)He also swears that he conducted the lab search in this case. He then knows that as of more then three months before this meeting I had the lab records that show there was no reservoir of bullets in the weapon and by this absenece show there was not. Or, if I had not known this and written and spoken about it extensively beginning maxxxthan beginning almost six years before this March 23 meeting, I knew it as soon as I received those papers Mr. Kilty says he personally turned up in this search of the lab files.

Mr. Kilty follows this deliberate falsifaction under oath with another that is clearly intended as a deception of and misrepresentation to this court. Had he not appeared in this matter as an expert witness another and pershaps less severe characterization might be possible. But he is an expert witness and he does deceive and misrepresent. His

immediately following words (top of page 3) are:

"In this case, more than one composition of lead was represented among the bullets examined." There is, of course, the well-established scientific fact that so eminent an expert as Mr. Kilty knows, namely that the copper composition is more definitive than the lead composition, and he makes no reference, expert that he is, to the existence of a copper-alloy encasing the bullets in question.

But how could there not be "more than one composition o f the lead represented by the bullets examined" when the FBI introduced a number of bullets having no connections with this case, from the records Mr. Kilty. peronally, supplied, and when as he fails to inform this court, those given to the FBI by Memphis authorities include different types and different manufactures? How could there not be when what was provided by Memphis authorities and is among the "bullets examined" include machine-gun bullets which could not possibly be used and are of different manufacture?

With all due deference to Mr. Kilty's eminent scientific credentials, as an expert witness he next states the wrong and irrelevant situation,"compatible with different compositions often found in the same box of ammunition." Anyone can load and unload and reload a box of ammunition. The bullets delivered to the FBI lab in this case as an example, to Mr. Kilty's personal knowledge, were in a single box but were not of a single type or manufacture.

What this renowned expert also failed to inform this court is that the records he did not withhold establish that of the few bullets of common manufacture that could have been used in what the FBI, lacking any proof, calls the "death rifle," there is not only a difference between the elements identified but most of them/lack an element all but one- found in the "death bullet" in Mr. Kilty's FBI laboratory.

All of the scientific literature I have read and collected, and it is considerable and can be produced, says this alone would have been exculpatory for more than 50 years.

With different types and different manufactures, naturally Mr. Kilty, when he does not disclose this, can swear to"different compositions" in a single box.

Nor did he bother to trouble this court with the amount of variation that can be significant or is not. Court records abound in cases of acquittals because of differences in composition, again going back more than 50 years in the science Mr. Kilty, not I, practises.

However, unlike that other expert, Mr. Wiseman, Mr. Kilty does not allege the interrogatory is irrelevant.

(Jim - I did not realize from his formulation that he was addressing the first set.)

Skipping the more arcane of Mr. Kilty's science, which has to do with words rather than fact ("which bullet or bullet fragment struck which person or object or which particular part of a person or object") we come to a classic of both science and semantics:

"There are no tests available which will specifically associate a bullet or bullet fragment to the exclusions of all other bullets or bullet fragments with a particular hole in a person or object."

This is not reminiscent of any of our interrogatories. I am sure we did not ask what tests are performed on "a particular hole in a person."

However, if one can even consider mentioning ERDA, the Energy Research and Development Agency, in the same breath with Mr. Kilty, there is complete and total refutation of his allegations in their "eager" recommendation to the Chief of the Criminal Division when the state of the science and the art was 12 years behind Mr. Kilty's present recommendation.

On December 11, 1963, Paul C. Aebersold, Director, Division of Isotope Development of what was then known as the Atomic Energy Commission, wrote the then Criminal Division Chief, Herbert Miller, in connection with the possibilities of their rather than Mr. Kilty's science in the ballistics evidence in that case:

"...it may be possible to determine by trace element measurements whether the fatal bullets (sic) were of composition identical to that of the purportedly unfired

unfired shell." Emphasis added]

"If the same batch of ammunition was used "in two different cases, he continued, "the method might show a correlation."

As regards holes other than in people made by bullets or parts thereof, as of 1963,"other pieces of physical evidence...such as clothing...might lend themselves to characterization by means of their trace element levels." [Emphasis added]

To this point in his affidavit Mr. Kilty made no mention of what is in the request and in the Complaint, neutron activation analysis. That is what Mr. Aebersold was talking about - more than a dozen years before Mr. Kilty swore "There are no tests available" that can or will do any of these things or even make the "association."

His fidelity in what follows is no less faithful to nothing:

"In this case emission spectroscopy was used to determine the composition of the edges of the holes in certain garments and this composition was compared with cloth taken from areas distant from the holes."

Why the FBI would want to test parts of the shirt or tie or collar of Dr. Kings clothing with other parts of the same garment is neither explained nor included in the request or the Complaint nor in pursuance of any forensic medical purpose. The real purpose of any such examination is to identify the foreign materials added to the garments and not shown by untouched samples.

In this formulation the intent of an expert could not be more unequivocally to deceive the court and to misrepresent.

The court is asked to take note that Mr. Kilty has not mentioned neutron activation analysis, a fairly well developed sicence more than a dozen years prior to his expert affirmation and then used in the JFK assassination. This was not unknown to Mr. Kilty because it was about this, in the part of C.A.75-226 neither he nor government counsel chose to cite, he committed perjury rather uniquely. providing the proof himself and under oath.

Because Mr. Kilty qualifies himself as an expert his answers to other parts of this interrogatory are neither faithful,nor complete.

He restricts his answer to items G and H to "elemental analysis" without saying what he means by it. Spectroscopy, which he has mentioned earlier, is not the only method. He does not mention neutron activation analysis, on the capability of which the FBI has been cited, if not by him.

Of "elemental analysis" he says it "cannot associate" what is being tested "to the exclusions of all other bullets."

If under the restrictions he cites this is true, he failes to inform this court fully and to respond to the interrogatory which begins "whether." It is possible to prove the negative, that it can by these tests be proven that a bullet did **not** strike an object, like Dr. King's clothing as one example. (He also omitted this in his reference to this unidentified clothing above.)

In his response to the interrogatory that asks "What are the kinds of tests" Mr. Kilty did not mention neutron activation analysis.

The purpose of the interrogatory to which Mr. Kilty does not respond in his 43 is not lost upon him. Whatever he alleges is "doubtful" is not relevant to compliance nor is "the notes generated by the Laboratory." The records sought in this action are relevant. If he is accurate in his sworn recollection, that some "notes" were "not dated," then on this basis alone he knows there was not compliance because we have not received this and did ask for it.

His "years of experience" are not here relevent. Nor is his opinion, "I fail to see how the dates of these particular examinations would have any relevance to their conclusions." Despite all the official contrary allegations, which may or may not be reflected in this non-response, the purpose of the interrogatories is to establsh compliance or non-compliance. When the FBI moved into this case within minutes, as the then Memphis SAC swore, and then flew the evidence to be tested to Washington that night, some of these tests could and should have been completed before daylight April 5. Yet we have been given none not dated two weeks later, not dated until after the belated identification of James Earl Ray's fingerprints.

From test firing for ballistics comparisons to spectroscopy these tests required no more time than I have stated. If the court desires of Mr. Kilty or others in the employ of respondent dispute this I will supply ~~sxax~~ the proof in FBI records not of this case.

Mr. Kilty's "I fail to see how the dates of these particular ~~xmxx~~ examinations would have any relevance to their conclusions" is a digression, perhaps to foster the propaganda line that is apparent, that plaintiff has ulterior motive. The question as of now ~~it~~ is of compliance, and ~~to~~ that any conclusions are not relevant. Nor are Mr. Kilty's opinion or visions of any conclusions. Conclusions and compliance are not synonomous. It is absolutely impossible to believe that the FBI moved into and took over this case within minutes, flew the evidence to Washington in the possession of a Memphis agent, and they laid around, on a case of this magnitude, and did not make these tests for another two weeks.

In Mr. Kilty's 47 the pivotal part is, whether or not ~~txe~~ true,"the date of the Laboratory report which included the results of the firearms examinations."

This is not a response to my third interrogatory, which asks a "list of each item of evidence subjected to any (emphasis added) of the tests or examinations enumerated" and "all tests or examinations which were made on each such item of evidence and the date on which each was made."

There is no answer to these questions. Instead there is irrelevant argument with the transparent intent to deceive this court. An example is "Time is required to conduct examinations." A second or a minute is time. It is a fact that these tests can be, have been and are conducted with rapidity, not only in a day, as records in my possession prove, but certainly in less than as much as three weeks. If "The Laboratory ~~xxpxtxs~~ reports do not include the dates on which the various examinations were conducted, I recall not one from the past and none provided in this case that was not dated. Nor is it immediately apparent why such reports would not be dated or if a failure to date them would help on the expectable cross-examination in criminal cases.

?/

These interrogatories do not call for an argument from Mr. Kilty. His own representation of his expertise (his II) does not include ballistics.

He does not dispute that the rifle was test fired within 12 hours of the assassination. He does not dispute that some of the test results were as much as three weeks after this in their dating. He does not claim that it takes this long for any of the tests, specifically not for a ballistics comparison which is fairly rapid after samples are obtained by test firing.

This was the most costly crime in our history. It was the second largest FBI investigation. The FBI had the immediate problem of identifying the killer. They began with the suspected rifle, which was found immediately. Fingerprints were also found on that rifle as soon as it was dusted. The fragment of fatal bullet was also provided to the FBI almost immediately.

However, the FBI could not and did not connect the identifiable fragment of the fatal bullet with the rifle by means of those bullets test fired from it.

This means that the FBI did not have proof of the cause of death or the converse, (although it has not admitted it, had proof that the rifle did not fire the bullet that did cause death.

Mr Kilty here engages in a bit of obfuscation that like so much in this case seems designed to deceive the court and is misrepresentative, "that the rifle had been test fired twelve hours after Mr. King's death has no connection with the date of the laboratory report which includes the results of the firearms examination."

The question in this interrogatory is simple and can be answered unequivocally. It asks for "the date on which each" of the tests was made.

Mr. Kilty's non-expert opinion of relevance is immaterial and from his own affidavit incompetent.

What cannot be believed is that some of these tests so everyday to the FBI were delayed as much as three weeks. This is the uncontested fact from what has been provided in what is sworn to as complete compliance.

So this, according to official statements about the horrible crime, was the

largest manhunt in history. The FBI flew the presumed killing rifle to Washington. It has an identifiable remnant of the bullet that caused death. Can anyone believe that it delayed any ballistics tests?

Suppose these tests proved that the rifle had not fired that fatal bullet. What would the FBI then have done for a suspect? If ballistics test proved the shot had not been fired from that found rifle, there was a prima facie case of conspiracy., with a legal obligation for the FBI to pursue the case as a federal crime.

The interrogatory is well founded and deals with overt noncompliance. There is no showing from Mr. Kilty or anyone else that the tests properly sought in this action were not done forthwith. But what has been provided is not in any single case the results of any prompt testing, the testing the FBI does every day and boasts about.

There is an evasion in Mr. Kilty's language, whether or not he is competent in the field of ballistics, as he does not claim to be. It is in his formulation that refers not to the laboratory report on the ballistics evidence itself, Rather does he speak of "the date of the laboratory report which included the results of the firearms examinations."

Aside from the tense he employs, "included," or past tense, there is the fact that each kind of testing is done independently. This cause seeks all test results, not only later, consolidated reports. Ballistics tests are separate from spectroscopy and finger prints. They are also necessary for comparison with the records the FBI keeps on [illegible] weapons that were used to commit other crimes.

(In this case we have the records of the checking of a pistol with records of this character, provided by Mr. Wiseman in Mr. Kilty's presence March 23, 1976. The time required by this checking can be illuminating to the court.) There has to have been the most rapid possible report on the ballistics tests alone and separately. We are here dealing with compliance. This has not been provided and it has to exist and to be readily found.

[illegible]. These paragraphs do not describe the March 23, 1976 meeting from the time Mr. Kilty joined it. They are misrepresentative. They select out several subjects [illegible] and then are not faithful to that discussion, insofar as Mr. Kilty permitted

any hodgepodge of ideas and questions. He was more interested in making impassioned speeches about plaintiff's alleged scientific ignorance. Thus he neither then nor here comes into contact with the perplexity he has not resolved. In fact he has added to it, leaving new questions where there need be none.

At [illegible] of my affidavit I state the truth,"that the FBI used some twenty-two rifles of different make and calibre. I have not been given any reports or tests on these rifles."

In his response Mr. Kilty does not state that none of these rifles was "used" in any way. Perhaps they were not, but he elects evasion in saying instead that"The material furnished plaintiff did not indicate these rifles had been 'used' or there were 'any/reports or results on these rifles.'"

Nor is it an adequate or complete explanation to add that "the firearms expert had indicated in the material furnished plaintiff that based on his experience and knowledge the general rifling characteristics of the bullet were the same as those produced by any one of numerous rifles."

Because Mr. Kilty says "the firearms expert" he has resolved one of the unnecessary problems created by the hiding of the names of those who did the testing. The firearms expert who was to have testified at a trial and who did provide an affidavit rather than live testimony in the extradition hearing is Robert Frazier. Mr. Frazier took an early retirement at a time when it became apparent that he might be called as a witness on precisely these kinds of matters in another of plaintiff's FOIA suits.

Before Mr. Frazier could do any test firing he had the rifle to be test fired. He also had the [illegible] remnant of bullet recovered from the victim's body and an assortment of other bullets left at the scene of the crime. The need of his examinations was not pontification about rifles in general but about one rifle in particular. If his testing showed the bullet in question to have been fired from that particular rifle there was no relevance in the number of other rifles with "general rifling characteristics" like those of the specimen that caused death.

On the other hand, this same Mr. Frazier swore to this in the extradition

affidavit:

"5. Because of distortion due to mutilation and insufficient marks of value I could draw no conclusions as to whether or not the submitted bullet was fired from the submitted rifle.

Prefatory to this he also swore that as "a result of my examination I determined that it produces general rifling impressions on fired bullets having the physical characteristics of those on the submitted bullet [sic]."

This affidavit was executed June 10, 1968, more than two months after the examination.

He did not, as the expert witness he was, inform that court what Mr. Kilty now says and was, of course, relevant in that proceeding, that these "general rifling characteristics...were the same as those produced by any one of numerous rifles." In this case and in the words of my interrogatory "some twenty two rifles of different make and calibre."

The need for specifying those different rifles that could have produced similar rifling characteristics is not clear. Establishing whether this one rifle to the exclusion of all others did fire the fatal shot is clear.

There was no distortion. There was mutilation but it was not caused by distortion. There is competent, unquestioned expert testimony for which I was responsible and which I have cited that is directly opposite Mr. Frazier's claim of "insufficient marks of value." That expert testimony is that there were adequate marks of value. It was not challenged or rebutted in that proceeding and the FBI sent no representative to defend its integrity and to certify subject to cross examination that it did not procure this extradition by fraud.

When to all of this is added the long delay in the times of testing represented by what has been provided, a delay confirmed rather than disputed by Mr. Kilty himself, among the real questions is whether or not there were others tests not provided because those that have been of this nature are all dated after the belated identification of Mr. Ray's fingerprints.

In practise the FBI lab does these examinations expeditiously because they are

indispensable in the solutions to crimes. The FBI's own Handbook of Forensic Sciences states (p. [illegible]) under "Firearms Identification" that "it has as its purpose to identify these ammunition components as having been fired from a specific weapon to the exclusion of all other weapons."

The need for the speediest possible testing and stated results is apparent. It is not only ~~as~~ the need of positive identification. There is a need for negative identification. If in this case the bullet could be shown not to have been fired by that rifle then an entirely different investigation was required, required immediately, and it can be fairly declared that the investigation required would have included of a conspiracy.

This need for speed is, of course, the reason the evidence was hand carried to the lab rather than shipped in accordance with the handbook's instructions.

I believe it therefore is anything but Mr. Kilty's representations about plaintiff's alleged "lack of knowledge or understanding of even basic laboratory procedures, much less the relatively sophisticated examinations."

There is no relevance here in response to this interrogatory in Mr. Kilty's opinion of plaintiff's knowledge or lack of it or understanding or lack of that. When confronted with the opportunity for saying there were no such tests as asked in this interrogatory Mr. Kilty elected to ~~[illegible]~~ evade and instead to offer these irrelevant observations. Nor can there be relevance in "the relatively sophisticated examinations when the sole question is of compliance and the purpose of the interrogatory is quite clearly to determine whether there is other public information called for by the request and the complaint and not provided.

We have a long and irrelevant lecture but no answer yet.

Plaintiff is not and does not present himself as an expert on FBI lab methods. Plaintiff, however, is not without professional investigative and analytical experience. Plaintiff has also worked officially as an investigator in murder cases going back to [illegible] and with the FBI on such cases. Separate from this proceeding plaintiff is recognized by all involved units of governments including respondent as the defense

investigator in the criminal case. Plaintiff has worked countless thousands of hour on this case and with this evidence. He has prepared evidence for hearings that neither defendant nor anyone else has challenged. Specifically he is directly and solely responsible for the analysis that led to and for the expert testimony that states exactly the opposite conclusions from those sworn to by ex Firearms ~~Exam~~ Expert Frazier, retired. Plaintiff also conducted the investigation for the habeas corpus petition as a result of which the sixth circuit court of appeals ordered an evidentiary hearing with language of strength and vigor not common in such decision.

Defendant rather than its agent Kilty and an unsolicited occasion on which it informed another federal court of this district about plaintiff's competence and knowledge and understanding. That was in a cause in which only laboratory work by this same laboratory and affirmations by this same Special Agent/Supervisor Kilty were called into question. The Department of Justice then informed that court that plaintiff knows more about this subject than anyone in the world.

It takes no special sophistication to ask if, when there is so inordinately long a delay in the date of any of the tests here in question, there could have been or are other records not provided in response to the request and complaint. Thus, not Mr. Kilty's opinions about plaintiff, are [illegible] the question. Perhaps Mr. Kilty prefers the traditional trick of ~~[illegible]~~ attempting to try the case on the other side. But he has not answered the simple question when he had ample opportunity to do so.

He skips to 54. In response it is necessary to make a general introductory statement about these various pictures, provided and not provided.

The purposes for which pictures are taken include their value as evidence. Pictures are also used to support testimony, especially expert testimony.

The question plaintiff raised at the March [illegible], 1976 conference, prior to and after Mr. Kilty joined it, is what was the FBI going to use to support the expert testimony Robert Frazier was to have provided in the trial scheduled for November 12, 1968, from [illegible] records [illegible] available to plaintiff?

[illegible] the photographs not produced [illegible] the [illegible] specific in the interrogatories. [illegible] fatal shot [illegible] by a comparison microscope. [illegible] this equipment [illegible] uses it. Its own Handbook of Forensic Sciences states:

"...the laboratory uses a comparison microscope to make a direct side-by-side comparison of fired evidence bullets...with tests obtained from a suspect weapon." (page 45)

This does not say and plaintiff has not said that pictures are always taken. Plaintiff does not and has not said that the identifications are made by pictures, despite Mr. Kilty's attempt at obfuscation. Plaintiff was quite specific on this in the conference with Mr. Kilty. He asked what the expert witness would use to back up his testimony and sustain cross-examination without the available comparison-microscope pictures and without a single set of pictures of all the markings on the specimen, Q51, said to have caused death.

Comparison-microscope pictures were taken in this case and by this lab. They all without exception relate to that which does not address the prime evidentiary need, fixing the cause of death.

There is a comparison-microscope picture comparing the bolt face with the empty shell found in the rifle. This was totally unnecessary except as lily-gilding because that empty shell was found in that rifle to the exclusion of all other rifles. However, the empty shell did not cause death. A bullet did. And there are no such pictures of a "direct side-by-side comparison....with tests obtained from a suspect weapon."

The same is true of the muzzle of the rifle and the windowsill on which it is alleged to have inflicted a dent by recoil from firing the fatal shot. Here there are pictures taken with a microscope, but they are not of the "side-by-side" comparison necessary to support testimony. Instead there are individual pictures that can't be compared as would have been required. Not taking the right and needed pictures and taking the wrong pictures of the essential evidence if the charges were to be sustained in court is not easily explained and is not what we have been led to believe of the competence of the FBI and its lab. Therefore, especially in the light of the long and extraordinary

delay in the comparison ballistics and other tests, there is a legitimate question of [illegible], in that [illegible] complaint has been provided.

To quote the [illegible] language of the FBI's own handbook the pictures of the specimen provided do not meet this primary need and are not even properly identified. They are, admittedly, not lab pictures, not pictures of evidentiary purpose. (Admitted in [illegible].) If these pictures were "not taken for scientific purposes," where are those that were taken for scientific purposes? Does the FBI take pictures not for scientific purposes and lack them for scientific purposes?

Kilty confirms all plaintiff said of these pictures: that they were not dated; that they were not taken for scientific purposes; that these photographs "are utterly incompetent for ballistics purposes." (This is not the same as attributing ignorance and a lack of understanding to plaintiff.)

He then alleges that "these photographs were taken for the purpose of recording the general appearance of the bullet when it was received at the FBI Laboratory." But the pictures provided do not meet even this limited purpose, not that it is the only purpose for which pictures are taken.

The most important part of the appearance of the specimen is its evidence. On bullets this includes the unique markings imparted by the rifle in the firing of the bullet. It is from this that the lab can obtain what Frazier described with the common reference, "marks of value."

In the firing the rifling of the barrel of the rifle imparts spiral marks to the jacket of the bullet. It is in these scored imprints on the bullet that "marks of value" are sought in laboratory examinations and are testified to in trials by expert witnesses.

However, in taking these three pictures, all allegedly taken, the lab went out of its way to obscure these "marks of value." It also managed not to present them photographically to be used in expert testimony it was to have provided and Retired Agent Frazier was to have testified.

[illegible] these pictures [illegible] compliance [illegible] in [illegible] which simply can not be [illegible] practice [illegible] to [illegible] the official [illegible] second [illegible] st the most expensive in FBI history. There [illegible] 25,500 [illegible], so [illegible] also [illegible] the practice/or the [illegible].

There are countless pictures that serve no real evidentiary purpose. The FBI's ostensible purpose is evidentiary.

So, along with the total absence of any picture of the scene of the crime, [illegible] known to be false; [illegible] no lab reports or examinations dated at the time [illegible] the tests were made; we now have the most essential single item of evidence, the [illegible], no meaningful pictures of any kind. None showing all the [illegible] identification [illegible] to have been testified to within [illegible] certain. None taken with the comparison microscope when the comparison microscope was used [illegible] essential pictures [illegible] taken through it. We have only pictures that [illegible] admits "were not taken for scientific purposes." He also says "[illegible] is correct in his allegation that these photographs are 'utterly incompetent for [illegible] purposes.'"

[illegible] "explanation" is [illegible] part that includes, "Competent firearms examiners do not make comparisons between test bullets and a questioned bullet by examining photographs or photomicrographs." This [illegible] the wrong question. Nor is it true as he alleges that such pictures 'would have absolutely no value prosecutive or evidentiary value.'"

The testimony of the expert witness had to be supported. Pictures serve this end very commonly. Especially with Mr. Frazier's affirmation that he could not make a positive identification [illegible] that was indispensable in a conviction [illegible] the prosecution [illegible] prepared for a [illegible] cross-examination. Yet with all the pictures taken and all those not taken for the necessary scientific purposes there is not a single

picture that could be used to support the FBI's expert's testimony, not one that could be used to support him when he would be under severe cross examination?

While there are the unessential ones taken and provided, those that have no evidentiary meaning relating to the cause of death?

His expert opinion in 59 is false and coming from an expert is a deliberate deception and misrepresentation. His words are "No photomicrographs were taken of this bullet [sic] inasmuch as it was not possible to effect an identification between this bullet and the test bullets from the questioned rifle."

Parenthetically, pictures would have been necessary to support and confirm this expert opinion, too.

"Identifications" are of two kinds, positive and negative. There is an identification with the questioned rifle or there is not an identification with that rifle. Mr. Kilty deceives here by representing that there can be only positive identification. Here there allegedly was the negative identification, if Frazier's word is to be taken. It is an identification so if as plaintiff believes is the case, photomicrographs are taken for identification purposes, the clear import of Mr. Kilty's words, they are taken regardless of which kind of identification they support.

The purpose of such pictures also is not as he states in 63, "for firearms identification purposes." He does not say that such pictures are neither taken for nor useful as an adjunct to testimony and Plaintiff did raise this question among other points one in part explained above without answer from Mr. Kilty and the other FBI agents present.

All these allegations are true of the test-fired bullets. Pictures were necessary to support testimony about them.

There is another need for complete pictures of evidence and that need emerged in this case as it did with evidence in the assassination of President Kennedy.

Bullets have jackets and cores. After firing, in which bullets are subjected to great stresses, the jackets can separate from the cores and fragments can fall out from this cause and from the stresses of firing and impact. In this case the jacket was

flared XXXXXXX back toward the stub of intact bullet remaining intact at its back end or the end toward the shell from which it was fired. This is in accord with the design of the bullet. However, pieces of core have, since the pictures were taken, separated from the stub of bullet. The same thing happened with an item of Warren [illegible] and FBI evidence known as Exhibit 399. What is remarkable in both cases is that this same FBI lab failed to make protective pictures of either quintessential item of evidence in advance of any other handling.

It does not seem to be an unwarranted assumption that the FBI knows the FBI business. With or without the kinds of misrepresentations to which Mr. Kilty here has sworn, with or without his false swearing, the purposes of the interrogatories have been frustrated and the questions necessary to establishing whether there was or was not compliance with the request and complaint remain unanswered.

If one believes the FBI does its job one cannot believe there has been compliance with the request and complaint as they relate to photographs. This was the purpose of the interrogatories. In all cases the real questions are eschewed for unjustified lectures and diversions. The real questions have to do with what pictures were taken and whether all were provided in response to the request and complaint. Mr. Kilty not only does not claim first-person knowledge, he makes what he calls "an assumption" instead. (Nos 54 and 55)

Spectrographic and neutron activation analysis, Nos 65-75.

[illegible] purposes of the interrogatories XXXXXX relating [illegible] tests [illegible] to [illegible]'s consideration [illegible] seems certain [illegible] regard to all material of this kind, non- [illegible] the extent of it. Rather than attempt to be responsive and from this to learn how relevant material could be found respondent elects to argue. This also is consistent with respondent's pretense that plaintiff has ulterior purposes in this suit.

There is a vast amount of scientific literature on these tests. Texts, including those dealing with criminalistics, are used in teaching. The various law reviews and the Academy of Forensic Sciences have published much and dependable information. For these purposes the information has to be dependable. The authors are authentic experts. Some

of the studies were funded by American and Canadian law-enforcement agencies. One of the authors is the private expert then under contract to the government so eagerly pressed upon defendant at the time of the Presidential assassination by ERDA.

The end purpose of these tests is the development of evidence within the capabilites of the specimens and the tests. This includes identification between the various objects tested.

All sources are in complete agreement that the more significant of the many potential tests have to do with the trace elements. The more minor elements thus assume greater importance in these tests.

For the tests to serve their purpose they must identify the various elements and provide a means of evaluating each.

This means that in the tests each element has to be identified and then compared quantitatively. Significant variations within any element can be certain negative identification.

It is generally believe that spectrographic analysis can be fine to parts per million, neutron activation to parts per billion. There are variations.

The FBI's handbook, under Instrument Analysis (pp. 61 ff) lists a variety of tests including these. It describes neutron activation analysis as "A quantitative technique" that "is used to determine cincent ation." Under "Emission Spectrograph" the handbook explains how each element is identified. (page63)

Contrary to Mr. Kilty's misrepresentation about the time required for these tests, discussed under the late dates those provided bear, the first advantage of spectroscopy is given in this handbook as "a. Rapid analysis of all metallic constituents." The second is "b. Detection of traces..." particularly with impurities. (page 64) At this point the utilization of neutron activation analysis is described as to " "determine the elements within a specimen, with a fineness "(2) Detects elements present at parts per billion level." (page 64) One of the uses listed is for the detection "of primer residues."

The material provided falls far short of what is expectable from the avilable

scientific literature, including that of the FBI. Questions these tests are supposed to resolve are left xxxx unresolved. Questions they are supposed to address are left unaddressed. In addition, in xx the same defendant's responses to the same request in a different case dealing with a different crime a very large amount of information was provided that was not provided in this case. All these factors lead to substantial if not definitive questions about compliance and non-compliance and intent. Thus the interrogatories seeks to elicit responses under oath that can provide indications about compliance and non-compliance. Rather than respond, defendant argues there has been compliance, simultaneously refusing to provide proof or to respond to the interrogatories.

His arguments are not necessarily accurate or responsive. An example, in his 65, is the claim that "there was no reason to conduct any compositional examinations on the "'empty shell and powder." If there is to be a determination of common origin then this test provides a means of comparing the empty shell with the other samples of ammunition of the same manufacture found at the scene by means of comparing "of primer residues," the words of the FBI's manual.

The question was not was there any purpose as Mr. Kilty ex poste facto sees purposes but was the testing done. He refuses to answer.

He falsifies further in the same non-response in pretending to address the absence of full testing on the victim's clothing, which was damaged during the crime.

"As a point of information," he argues, "had the firearms examiner been able to positively associate the Q64 bullet with the rifle, no compositional analysis whould have been conducted."

Had this been the case there would have been a serious evidentiary gap.

The most obvious is that connecting the fatal shot with the rifle still left the serious problem of connecting that rifle with a shooter, the lone accused assassin or any other.

There is also the most serious problem of how Dr. King's clothes came to be damaged when the medical examiner swore that there was but one ballistics wound on the body of the

victim. How account, in the light of this testimony, for the second and larger wound below the victim's collar line?XXXXnat How account for the blowing off of his tiex?

My purpose here is not to argue any xxxx criminal case. It is to state fact immediately known to the FBI and not addressed in any way in any of the tests given me and quite contradictory to Mr. Kilty's unsolicited and dubious opinion.

The simple and obvious truth is that in a crime of this magnitude and immediate consequences, with major cities aflame from it, there was an urgent need for the most complete investigation possible and the most complete lab work possible. This was not a time for miserliness in lab work when the extra work first of all was called for by all standard authorities and when the basi work was being done anyway.

This is not to say that these tests were not performed. We are now told they were not. The purposes of interrogatories are to attempt to resolve these more than reasonable doubts, especially when the non-responses come from dubious sources.

If what I have not been given was not done it was a certainty that there would and could be no satisfaction with the investigation of the crime or the official solution.

The question this poses is was there or could there have been another shot or another shooter? There remains, from the official account, the second wound to be explained and to be faced in a trial.

This xx medical examiner was defendant's witness in an extradition affidavit.

"Notes" are not stated conclusions. Mr. Kilty says the notes I have been given is all there are. He then attributes expectation of further records to xxx "lack of knowledge" and plaintiff's "placing too much stock in compositional analysis of Q64 and the bullets from the cartridges left at the scene."

This simply isn't true. There were chains of evidence to be forged. The notes given disclose major differences, even an element in Q64 not found in the other recovered bullets. And there was the evidentiary need to associate Q64 with the damage to the victim's clothing. These notes disclose x nine elements in the core alone. Only one is indicated xx as detected in the clothing. Aside from this there are the five other elements in the jacket. The lab thus failed to associate the clothing and Q64. It cannot

by stating that lead was found in the edges of the damages to the clothing. As all the literature, including the FBI's, states explicitly the importance in these tests is the trace elements. Moreover, lead is commonly alloyed and is in different combinations in different bullets. With cross examination to prepare for, if this were all the lab work it would be an open invitation to ridicule the expert witness of the stand and to jeopardize the prosecution. Lead is found in a normally non-lethal wide variety of everyday objects that include paint and type-metal, plumbing materials and many others.

68. Beginning with an acknowledgement of plaintiff's correctness in his affidavit, not a lack of understanding, is evasive. It does not provide proof that other testing was not done. It does not say that negative results of testing is not included in notes when normally they are. It does not say that in this case other elements were not tested for or that the test results were negative and nothing else was identified. It argues irrelevant generalities instead. What is "usual", what can happen, what is difficult is neither the question nor responsiveness. Nor is a reference to "physical" identity between samples the question or responsiveness when the tests are other than physical.

69. There is only one way for there to be proper response to t is interrogatory other than providing withheld material. That is to declare unequivocally that when Mr. King was killed the FBI did less than it could and should have. We have been told that reports were not made, pictures were not taken, tests were not performed or their results were not recorded. What is in those admitted 203,500 FBI documents so close to totally withheld in this case when full compliance has been repeatedly sworn to?

70. This response is different than that Mr. Kilty made during the March 23, 1976 meeting. Then he claimed that there can be no "quantitative measurements." [from 78] Now he says they were not necessary. He gives neither argument nor reason for his allegation and it is not true. There was the most urgent need for all the evidence possible, particularly because Director Clarence Kelley has recently admitted on national TV, despite any current representations of these tests, there was no hard evidence connecting the accused and the crime and there was only circumstantial evidence. Mr. Kilty's current

opinion on what was "necessary" nine years ago and in that time of great crisis is not supported in any way and is inherently without credibility.

What he now claims is disputed by all available sources, including his own lab's quoted handbook. The facts are as stated in my affidavit and he does not respond to them. Beginning with a "comparison of all identified elements" these required test results have not been provided.

insert on 77: When I then offered him contrary evidence from his own delivery in another case he stonewalled and again attributed ignorance to me. Without a qualitative result the test would be limited to identification of elements only.

71. When Mr. Kilty swears that from his "knowledge and experience" he does not know what is meant by "normal practise" when in my affidavit this is also described as including "a listing, evaluation and comparison of all the identified elements," it is apparent that his "knowledge and experience" do not include the published information of his own lab and that he is entirely unfamiliar with all the published scientific data, including that reporting studies made with funds provided by his own Department.

The results of neutron activation analysis are not covered by his sentence, "In a review of the neutron activation results, it is seen that one element, antimony, was measured." No measurement of the other elements? Particularly not when as he here admits, "the cores of the bullets examined had relatively high amounts of antimony present" and determinations and identifications are made with traces rather than the major components? In going off into this he says nothing about what plaintiff's affidavit alleges is required of these tests and has not been provided.

Defendant persists in refusing to respond. It can be claimed that the FBI did not do what was expected of it but it cannot be stated that these comments respond to the allegation that all test results have not been provided.

72. My affidavit declares that certain tests were conducted and the results were not given to me. There are citations of this above. It is not a response to claim no more than that "The 'stated conclusions'...are included in what he has been furnished."

This is deliberately evasive language. What is "included" is not the question. What was provided is and is not responded to. There are, for example, no conclusions about the test results on the testing of the damaged areas of the clothing. It is not a conclusion that lead only shows there and this is not stated. There is no conclusion stated about any of the other possible total of 13 other elements was or was not found, was or was not compared, did or did not have meaning attributed by the lab.

73 Mr. Kilty confirms the statements in my affidavit but does not in any real sense respond to the interrogatory or provide any explanation of what would certainly seem to indicate there are prior tests results still withheld. The lab's own description of the value of spectroscopy includes the rapidity with which it can be completed. It also provides information that is not included in what has been provided. It remains an uncontested fact after this "response" that the only certain dates of these tests are as plaintiff said after the belated identification of Ray's fingerprints. The evidence was flown to Washington April 4. The certain dates of spectroscopic examination, these same examinations with the merit of speed, is two weeks later. With all the investigative and evidentiary needs it simply cannot be believed that there was so long a delay in this crime.

Mr. Kilty offers an unsubstantiated opinion that "this is not pertinent." It is in every sense quite pertinent, particularly because the apparent delay is so great when there was initially so great a rush that the evidence was handcarried to the lab. The dates themselves are pertinent to compliance. There is no response on when the tests were conducted. Instead there is a semantical effort in which Mr. Kilty's formulation does not deal with when the tests were performed but rather with a non-existent "reason for not having the reports dated (Emphasis added) a day or two after completion of the examination." There is absolutely no proof of the dates of the examination and these are handwritten notes it cannot be assumed were dated other than when they were written. This still leaves two weeks of no testing in a crime of this nature or other records still withheld.

Many of the remaining 11 paragraphs of my affidavit deal with lab work. Mr. Kilty