UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. U. S. DEPARTMENT OF JUSTICE, Defendant	Civil Action No. 75-1996

AFFIDAVIT

My name is Harold Weisberg. I reside at Route 12, Frederick, Maryland. I am the plaintiff in C.A. 75-1996.

1. In about September 1976 I informed this Court that the Department of Justice's substitution for my request, providing me with copies of its Headquarters MURKIN files, would not comply with my request. Going on two years have passed, many months of great cost to all parties in time and money, and the fact is that there is extensive noncompliance with my actual information request as well as with this substitution for it. To a limited degree I have addressed this in the affidavit I executed on May 16 of this year.

2. Shortly after I informed the Court that the FBIHQ MURKIN files could not result in compliance, I informed the Court that the Court was being systematically and not accidentally misled and misinformed by government counsel and that as a consequence deliberate noncompliance was being accomplished.

3. It is my recollection that I stated that, without some forceful end to these misrepresentations and the ends they accomplished, this case would be prolonged indefinitely, without compliance. By then I was without doubt that continued avoidance of compliance with my request was the official intent.

4. In recent years I have obtained some of the FBI's records on me going back to World War II as well as a few of those of other agencies. Although here again the most limited compliance is all that I have obtained, these records reveal that the FBI lies, even to other agencies; creates false and self-serving internal

derring-do FBI did not risk going before a judge with its authoritarian device of a frivolous suit against me.

9. The FBI also has refused to respond to my efforts to correct its false and inaccurate records on me. When it became apparent that at least some of its defamations would be included in the release of JFK assassination records beginning December 7, 1977, I asked Mr. Lesar to write the Attorney General in an effort to preserve my rights and to prevent this newest FBI trick to undermine confidence in me and my work. I have no knowledge that Mr. Lesar has ever received any response.

10. Whatever was in the minds of those in the Department's Civil Division when they evolved this consultancy arrangement, the subsequent six months have convinced me that it was merely another one of these official tricks to frustrate my work and to waste my time and limited resources.

11. Whether or not this was a conscious Civil Division objective, the fact is that the Civil Division has so systematically misinformed and misrepresented to this Court in the matter of this consultancy that I can recall only two of its many representations that are not false. It is true that the Court directed me to work as the Department's consultant. It is true that I told Mr. Lesar that I would not again voluntarily confer with the Civil Division or the FBI without there being a record. While this is not the representation made to this Court by Ms. Betsy Ginsburg on May 17, which is that I refused outright, I stretch her representation not to describe it as misleading. I did tell Mr. Lesar I would confer with anyone if there would be a record of what was said.

12. These persisting misrepresentations and totally false statements with which I am constantly confronted are the reasons I will not voluntarily engage in any conference of which there is no record.

13. Ms. Ginsburg's statement that in agreeing to the stipulations I waived a Vaughn v. Rosen motion after the Court had indicated a willingness to accept such a motion is truthful but incomplete. What the Department did not inform the Court is that it and the FBI did not live up to those stipulations. I addressed this to a limited degree in my affidavit of May 16, 1978. Ms. Ginsburg also did not inform this Court that when I complained about violation of the stipulations I was met by

Court. It was made also by Mrs. Lynne K. Zusman.

15. Ms. Ginsburg's statement of May 17, 1978, "To date we have received nothing," like the similar prior statements by Mrs. Zusman, is not truthful. Beginning a few days after the Court directed me to act as the Civil Division's consultant, I provided much information to the Civil Division. Earlier I had provided much information relating to its noncompliance to the FBI. In addition, Mr. Lesar, by agreement with the Civil Division, had arranged for the preparation of a memorandum listing some noncompliances. This was done by a prelaw student at American University. (She remains unpaid.)

16. Ms. Ginsburg made similar misrepresentations to the Court on May 10, 1978.

17. Because Ms. Ginsburg was new to this case on May 10, I spoke to her after the calendar call, outside the courtroom. I then informed her that it is not true that I had given her division nothing. During the following week, Ms. Ginsburg had ample opportunity to learn the truth.

18. There was another conversation Mr. Lesar and I had with Ms. Ginsburg and FBI FOIA SAs Horace Beckwith and Ralph Harp immediately after the May 10 status call. It was about the still-withheld names of prisoners who provided information and the still-withheld sections of Memphis Field Office (MFO) file Sub G. As I state in my affidavit of May 16, SA Beckwith, with real or feigned anger, stated that the FBI would not provide the missing sections of Sub G. He reiterated this even after, with resignation, I said I'd pay for them.

19. In what is not a new FBI trick, in the courtroom on May 17 SA Beckwith gave Mr. Lesar and me copies of a letter the FBI had just mailed to me. It stated that it had mailed Sub G to me. This enabled Ms. Ginsburg to inform the Court of the mailing, represented as compliance in the face of an alleged unreasonableness on my part.

20. The FBI's May 16, 1978, letter is merely the most recent in an endless series of self-serving and less than faithful FBI representations. Attached as Exhibit 1 is the FBI file copy rather than the original because the copy contains the FBI's also self-serving note. The numbers I have added in the left margin

affidavit of May 16, I had no idea that the FBI would be pulling this trick but I did address it in that affidavit in Paragraphs 209 ff (page 31), with attached Exhibit 32. Exhibit 32 includes the FBIHQ directions that in themselves violate the stipulations.

2. "... a review of correspondence from you failed to disclose the volume numbers of those Sub G volumes which you state you have not received." This may not be false because of the semantical formulation. If I did not write a letter, I did inform the FBI of the numbers. The FBI's own list of these missing Sub G volumes is the second record in Exhibit 34 of my affidavit of May 16.

3. "... discrepancy as to the number of volumes..." This is true, as it is also confusion of the FBI's own creation. The FBI's note on the missing volumes limits them to four, beginning with Volume 32. But the FBI's list also has two earlier volumes, 27 and 31, that were not provided. The FBI prepared its list from the list I gave it.

4. "... a copy of the requested volumes was provided to your attorney ..." That this is false is set forth in my affidavit of May 16. The records the FBI refers to were given to me, not to Mr. Lesar. They did not include <u>any</u> Sub G records. Over a period of months I wrote a number of letters to obtain these missing records. Neither the FBI nor the Civil Division ever responded.

5. "... based on our records all Sub G files had been previously provided to you." The FBI's own records list the sections not provided.

6. "... unless there appeared on the field office copy of the document a handwritten notation which would not have been on the document received at FBIHQ." This is not the order sent to the field offices by FBI Office of Legal Counsel SA Charles Matthews, as set forth in my affidavit of May 16, paragraphs 208 ff., and in SA Matthews own teletype, in that affidavit's Exhibit 32. The fact is that most of this Sub and at least an appreciable percentage of other Subs were withheld under the claim they had been provided by FBIHQ. I do not recall receiving a single one of these volumes that

appropriate parts of the stamps.

7. "... which we had orally been advised Mr. Weisberg was missing." Including this language in the internal note served to deceive those who received copies of the file copy of the letter. As set forth above, the FBI had two lists of what was missing, the list I provided of what I had received and the list it made on which it recorded what I had not received.

(At the outset it would have been easier and cheaper for the FBI to xerox the records it claims duplicated those of FBIHQ than to go through all this hurly-burly and window dressing and review and re-review. It also had the cost and trouble of all the extra record-making and record-keeping required by its decision not to simply xerox all the Memphis records. If the withheld field office records are in fact an exact duplication of FBIHQ records, the total cost of providing copies of them is virtually only the cost of the paper. I believe that the field office files may hold what the FBIHQ copies do not hold, that the FBI was engaging in further harassment or that it was engaged in creating added inflated statistics to weep upon the courts and the Congress in its efforts not to have to comply with the present FOIA.)

21. This FBI production with regard to the Memphis Sub G files serves as a distraction from what happened once the Civil Division, on its own or not, fixed upon this consultancy dodge.

22. The Department has never truthfully informed the Court about the arrangement or its purposes and limitations.

23. This consultancy has been abusive of me, as I shall explain. Shortly after I was directed to engage in it, circumstances beyond my control did cause delays in what I was able to do. But there never was a time in which I did not do all that was possible for me and there never was a time during which the Department was not fully informed of my condition and circumstances. I believe the record establishes that the Department was not serious in the project and that it caused delays, frictions and controversy that did not have to exist.

24. Aside from what is required of me by my life and work, I am engaged in a number of other FOIA efforts, some now in other courts. It is not possible

25. Beginning in the summer of last year I suffered another medical reverse. By August, it was diagnosed as arterial blockage in addition to the pre-existing and serious obstructions in the veins of both legs and thighs. I was not able to walk 250 yards without growing dizzy. In about a month I lost almost 40 pounds and much of my physical capabilities. Because surgery was not indicated, regular physical activity was prescribed. While trying to perform under the consultancy has interfered with this medical need, I have taken much time to follow the doctor's orders.

26. Not long after the in camera conference of November 21, 1977, the weather became severe. There were two periods of a week or more each in which I could not get our car out of our lane. There was a much longer period in which my wife was not able to leave our home. When I fell down twice on one trip to the mailbox, I decided that I had to attempt to clear our long lane. (I have been advised that falling can jar a clot loose. That can be fatal.)

27. After a brief thaw was followed by more precipitation, about 500 linear feet of paved area became a solid sheet of ice. It grew so thick that well into March, when I was finally able to remove the last of it, the ice that remained was as much as six inches thick.

28. At my age and in my condition, with my limitations and reduced physical capabilities and with the care I must exercise, this was a not inconsiderable undertaking for me. At the outset 15 minutes exhausted me, requiring that I rest for longer periods of time. Because of my impaired circulation, I also grew cold and numb. This required that I return to the house and wrap myself in blankets until I warmed up again. But as my body adjusted to the exertion, I found that it provided the medical benefit forecast by my doctor. It became possible for me to work longer periods of time. Improving weather permitted other kinds of physical activity. When I can, I follow my doctor's instructions in this regard. It takes much time.

29. During this entire period of time it has not been possible for me to obtain a proper fit in the venous supports I am required to wear all my waking hours. As recently as May 17 I returned an improper set and made an appointment for another measurement prior to the calendar call scheduled for May 24. An improper fit is

of Justice Building in April I was not able to climb two flights of stairs without stopping to rest.

32. Mr. Lesar had met Mrs. Zusman. He was favorably impressed by her pleasant manner, by her professed desire to reduce litigation to the minimum and to work problems out. The three of us met in her office on Wednesday, November 2, 1977. She then set up a meeting involving Mr. Schaffer for Friday, November 11.

33. I took time to prepare a talking paper for the meeting of November 11, 1977, because I had been led to believe that the purpose of the meeting was for me to outline what the Civil Division needed to know to facilitate compliance in this instant cause.

34. What actually transpired was not what the stated purpose of the meeting was. The Civil Division collected FOIA personnel from the FBI, the Civil Division, the Civil Rights Division and the Office of FOIA/PA Review. Instead of hearing what I could say about noncompliance, Mr. Schaffer called upon the others to, in effect, make speeches about how diligent and effective they had been in obtaining, reviewing and releasing all the relevant records. Despite this, I believe there is no reasonable doubt that Mr. Lesar and I established there was widespread noncompliance. It also was obvious that as of that late date nobody anywhere in the Department knew what was public domain in the enormity of files that had been made part of the case. It turned out that those conducting the review on merit had no idea what had been published. They had not read the many books on the subject, did not have the books and, of course, did not consult the indexes to the books. Their minds appear to have been immune to the contents of the hundreds of newspaper stories in the files they read on review. As a result, they released information in news accounts and withheld the identical information in other records. Photographs, too, were released in news and magazine stories and withheld in other form. It also turned out that the FBI did not provide its copies of the books on the subject to the reviewers. If there was a record the FBI did not give the reviewers, that record was not provided. There is no review of the withholding of <u>entire</u> records, only of the withholding of some of the content that was before the reviewers. Thus I have perhaps hundreds of records that refer to other records and remain without

36. All these people wanted of the meeting is that Mr. Lesar and I rubberstamp what they had already done. Bearing on this is the fact that no additional records have been produced since that meeting with the exception of the Civil Rights Division report. The meeting was a futility.

37. Mr. Schaffer then arranged that we would meet with him again a week later, on Friday, November 18.

38. Because of the time limitations under which I prepared my affidavit of May 16, the date of November 11 rather than of November 18 is used for the separate meeting with the FBI relating to MFO Section Sub G.

39. In preparation for the November 18 meeting I prepared another talking paper. When Mr. Schaffer, despite his promise, was not present and when once again Mr. Lesar and I were subjected to a round-robin of protestations of purity of intent and performance, I was not able to go into the matters for which I had prepared. After that meeting I gave the FBI copies of that paper for the FBI, for Mr. Schaffer and for Mrs. Zusman, who had left the meeting before it ended.

40. True to tradition, the FBI stonewalled on everything. Illustrative is the indices to the MURKIN prosecutorial volumes and the volumes themselves. The Department and the FBI had claimed that the indices were not within my request. If this had been true, as it was not, they were still MURKIN records and thus required to have been produced. As my affidavit of May 16, 1978, shows, the indices are a specific Item of the request. After months of stonewalling, copies were produced. In the withholding of names from a name index, these copies were largely valueless. They also created other problems, leading to misidentifications as those who examine the indices in the future would be forced to conjecture over the names.

41. In a meeting after the calendar call prior to the conference in Mr. Schaffer's office, in an effort to work out compromises with the FBI, I had asked that the indices be reprocessed. I produced an internal record, between the FBI and AUSA John Dugan, in which the FBI stated that, because of improper withholdings of names after the MURKIN records had been processed the indices would have to be reprocessed. SA Matthews in particular was adamant about not cleansing the indices of improper withholdings. Without our having had another word from the FBI on this,

regard to the MFO files and because they were packaged and shipped in utter disaray, I was delayed in going over them. Instead of being mailed as processed, the requirement of the stipulations, the FBI accumulated them until more than 6,000 unorganized papers were jammed into one large carton I could not lift. Records that had been processed in July were not mailed until the end of September. Then all were mailed in a single large carton, on the last day that permitted them to reach my home by the last day of September, the date required by the stipulations for compliance from all Memphis files. This was more than deliberate violation of the stipulations. It was harassment. I was not home when the accommodating rural mail carrier carried them into our kitchen for my wife. (The carrier would have been within postal regulations if he had deposited this heavy carton at the base of our mailbox, which is distant from the house and cannot be seen from the house.) When I returned home, after an absence of two days during which my wife had had to walk around that carton, I was able to remove it only by opening it where it was and then removing the individual files. As I did this I was able to make a rough arrangement of them in a different room. I also separated them by their file designations. But I had no way of knowing what had been shipped or the proper sequence of these records. This is reflected in my prompt and indignant letter to FOIA supervisor, SA John Hartingh. But I did, immediately, begin a review of them. To illustrate the extent and the deliberateness of the misrepresentations to this Court about the nature and extent of my efforts to inform the FBI and the Department with regard to noncompliance, I attach Exhibit 2.

43. The heading of Exhibit 2 is "Memo for John Hartingh et al for 11/11/77 meeting." It required much unpaid time to prepare these eight single-spaced typed pages. I hand-delivered Exhibit 2 to John Hartingh at the November 11 meeting. I believe I also gave copies to the Civil Division.

44. This memo is detailed and specific. It addresses noncompliance by subject and by reference to specific records for which positive and unmistakable identifications are included. If from the haste required for this large amount of work any of the content was not comprehnsible to the FBI or anyone else, I have had no inquiry from anyone asking for clarification. What may not appear to be fully

persisting misrepresentations to this Court - misrepresentations I believe are neither accidental nor the consequence of lack of internal communication in the bureaucracy - I provide direct quotations from the transcripts of some of these misrepresentations.

46. There was no transcript made of the in camera meeting. However, I believe that the Court may recall that I did dispute Mrs. Zusman's representations on that occasion.

47. I believe there was one representation at the March 7, 1978, hearing that the reporter missed. The alternative is that this was at the in camera meeting. If the clerk made notes, there may be some confirmation of my recollection.

48. It also is my recollection that in camera Mrs. Zusman told the Court that I had refused to engage in the consultancy. I therefore believe that it was on March 7 that Mrs. Zusman stated that I had sought the consultancy. Neither statement is truthful, as is reflected in many records, including letters I sent to Mrs. Zusman and Mr. Schaffer.

49. For the convenience of the Court and to enable checking the faithfulness of my representations, I attach the March 7 transcript as Exhibit 3.

50. Mrs. Zusman stated at page 2, line 19, "that Mr. Weisberg was to review the approximately 44,000 pages of documents in the Murkin investigation ... and to make an inventory or listing of the deletions ..." This is contrary to every fact, every communication, even to what is possible for me. Prior to the in camera meeting there was discussion of my preparing a memorandum based on notes I had made. It was clearly understood that I had made limited notes for limited purposes and that I had not annotated all the records and could not do or have done this. Most of the records provided are not relevant to my personal interests.

51. If Mrs. Zusman's statement were not false and misleading and if it were possible for me either to have undertaken that responsibility or to have performed that task with inclusiveness and then had obtained a replacement of each and every piece of paper from which there is improper withholding ,there would still be extensive noncompliance. Among the reasons for this is the government's substitution of the MURKIN file for my request. The government's response was not and is

this is limited to the FBI. My request was of the entire Department. Mrs. Zusman made no reference to any other component. The notes I was asked to review are limited to some FBI records.

52. "In the months that have passed since that conference, we have been in touch with Mr. Weisberg and with his counsel, ..." (page 3, lines 2 and 3) I recall no phone call or any kind of communication from the Civil Division at any time since November 21, 1977. I do recall that Mrs. Zusman asked Mr. Lesar to ask me not to write to them directly but to write to Mr. Lesar, based on which he could write to them. This would place an impossible burden on Mr. Lesar. Besides, I, not Mr. Lesar, am the Division's consultant.

53. "... but we have not yet received any kind of listing of the complaint that Mr. Weisberg was to generate ... and that is what the Government has been waiting for ..." (Page 3, lines 4-6)

54. While it is true that I did not provide any complete listing - and providing only a list is not my understanding of the consultancy - there can be no doubt that over a long period of time, prior to and after Exhibit 2, my eight-page memo to the FBI, I did provide a very long list of specifics of noncompliance. From the first to the last, I have had no response of any kind from the considerable time and effort I expended to provide this information to the Department and the FBI. I recall no inquiry about any, no claim to incomprehensibility and with the exception of a few pages of MFO Sub G that were to have been delivered before October 1, I recall no single record the FBI provided. There certainly was no replacement copy of any record in all this time, and in particular, not after my November 10 memo to SA Hartingh et al.

55. While thereafter (beginning at line 10) the Court indicated that the Court was in error in its recollection, it is my recollection that rather was the Court incomplete in its recollection. I had offered to make some compromises in return for speedy and honest compliance with other Items of my request.

56. Mr. Lesar's recollection (lines 21 ff) is correct. I was to review my notes and correspondence only. His description that continues onto the top of the next page also is accurate. There likewise is no doubt that "we have made it very

whatever issues could be resolved as cooperatively as possible to try and crystallize and narrow the issues ..."

58. This can be true only if undeviating stonewalling represents a good-faith effort. In all the ensuing time I have not had any other conference with government counsel. Having lifted that hot iron too many times, my hands still burn. I have written many detailed and specific letters, in all cases without response either by mail or by phone or by the providing of a single withheld record or a single record of the many thousands of records from which there was unjustifiable and/or unnecessary withholding.

59. I recall no single government act that can meet this description, recall no government offer to compromise on anything. While I believe that the government would like me to abandon these and other requests for information, I have received no proposals. The government stalls and awaits my willingness to abandon my efforts or the end of my life while dragging all of this out as this and my prior affidavits set forth.

60. If any energy has been "put-in" by the government (page 6, line 19), from what I know that energy has been expended in not responding to communications, in not being responsive on compliance and in preparing misrepresentations to this Court.

61. "The Government remains ready to cooperate." (line 22) If not responding to a single letter on substance or relating to my consultancy or compensation or the repayment of my expenses of six months ago constitutes a readiness to cooperate, perhaps this self-service can be regarded as other than a misrepresentation. The government people were not even prepared to "cooperate" among themselves. When we met with them in the office of AUSA John Dugan after the in camera conference of November 21, they had not thought through the improvisation they presented to the Court. They were not prepared to go forward with even the mechanics of it. They had no equipment ready for me yet they feigned an urgent need to receive tapes as soon as I dictated them. Mr. Dugan did not trust either the mail or the Department's internal mail. When I offered to take the cassettes to the local FBI residency, SA Matthews regarded that as an effort to subvert the FBI and rejected my offer.

described this booby-trap of a consultancy as "the Government's generous and unique offer." This "generosity" is reflected by not providing the equipment promised, not even tapes; by not repaying my expenses; by not even acknowledging receipt of my proof of the expenditure and by steadfastly refusing to respond when I asked for specifics relating to Mr. Schaffer's offer to pay me as they pay consultants. I do not regard it as "generous" to compel me to get up at 4 and 4:30 in the morning, which is earlier than my 5 to 5:30 norm or to prevent my having any time for anything else I want to do, especially writing.

63. "The Government will be ready to respond fully to all issues within 30 days after it receives plaintiff's final papers." (page 8, lines 18-20) This is not possible because of the continuing false pretense that there can be full compliance from the FBI MURKIN files alone, as I have made clear from the outset. The government's consultancy scheme is limited to this diversion, its substitution for my actual request. But were this not true, there still is no need for the year or more of delay in responding to the many long and detailed examples of noncompliance I have given the government over a period of more than a year, sometimes with copies of the records in question. More recent examples will be attached as exhibits to what follows. All these specifications of noncompliance remain without response.

64. Other misrepresentations include that the government did not know whether or not I was proceeding with the consultancy. My December 11, 1977, letter to Mr. Schaffer, attached to Mr. Lesar's May 16, 1978, affidavit, proves this to be false. From the first I did keep the Civil Division informed on my progress. In the second paragraph of this December 11 letter I report that in the first 19 days I had worked 80 hours. I also recount the delays and problems caused by the government's not living up to its offer to provide proper equipment for me to use in dictating from my notes and letters. (When this and other efforts were entirely without response and because my old tape recorders were not suitable, I purchased an adequate $300 machine for which I have no other use. When my wife and I both needed it at the same time, I had to purchase another machine for my wife to use.)

65. Mrs. Zusman agreed for my wife to transcribe my dictation. Mrs. Zusman has yet to confirm this in writing. She also has yet to inform my wife the

November 25, 1977, I cautioned him that the Court had been misled and misrepresented to in camera. I included specifics of noncompliance. I sought to meet my obligations by full and honest reporting of the government's problems as I saw them. Beginning with this first letter to Mr. Schaffer, I eliminated any basis for any representation to this Court that the government had any reason to have any doubt about whether I was proceeding as directed by the Court. In the first paragraph I state, "I will do what I was asked to do as rapidly as possible ..." At the bottom of page 5, after having informed Mr. Schaffer of what I regarded as "pitfalls" and other troubles the Department could expect to face - informing him against my own interest to be fully cooperative and informative - I repeated this in a different way. I informed him that the government's failure to provide me with required tools had delayed my dictating of notes. I then said, "My writing is to inform you of these matters and to begin to undertake the discharge of the responsibilities imposed upon me ..."

67. I had begun a review of my notes. By December 11 I had annotated them to Volume 40 of the FBIHQ MURKIN files (paragraph 2). This had required that I work days of as long as 20 hours (paragraph 3), surely not good for me but as surely positive proof that, regardless of Mrs. Zusman's later representations to thic Court, I had from the very beginning begun to perform on the consultancy.

68. In all these communications I sought without success to learn the rate at which I would be paid. This is not an unreasonable inquiry. But nobody ever answered me. By December 17, 1977, Mr. Lesar's Attachment 3, I expressed indignation and suspicion to Mr. Schaffer. I asked for a written undertaking, not for immediate payment.

69. While this is not my first reference in this correspondence to the missing records, those referred to other agencies, in paragraph 3 I cite three other agencies to which nine identified records, all in Section 53, had been sent. I report this because now the government has asked for another 30 days to complete compliance on referred records.

70. This letter informed the Department that in my review and annotation I had reached Section 53. This meant that I was more than halfway through my reading of my notes on the FBIHQ MURKIN file. It leaves no possibility of doubt that I was

worksheets and its refusal to do anything about the many relevant records they show are withheld and have been withheld for periods of up to and more than a year without claim to any of the exemptions of the Act."

72. Because these letters are attached to Mr. Lesar's affidavit, I do not include them here.

73. Mrs. Zusman knew in detail about these and other letters from the one-sentence letter dated December 29, 1977, signed by "Carolyn M. Brammer, Secretary" to Mr. Schaffer: "Inasmuch as Mr. Schaffer will be away for the Holidays until late January, 1978, I have forwarded your most recent letters to Mrs. Zusman for her attention." (This is the entire letter. I received no other communication. This also says that Mr. Schaffer took a nice vacation while forcing me to do his work.)

74. It was more than a month after Ms. Ginsburg took over the case before she made a court appearance in it. In this time she should have learned that I had in fact begun to work under the consultancy and had performed at a reasonable rate of speed. She certainly should have known other than her reiterated misrepresentation to this Court, that the Department had received "nothing" from me.

75. As stated above with regard to attached Exhibit 2, I believe that I gave copies of that letter to the Civil Division. Unless the FBI has successfully resisted establishing diplomatic and legal relations with the Department, that letter and all the many other letters I wrote the FBI should be available to the Civil Division, if not also in its case files. Were this not true, I did inform the Civil Division of these letters to the FBI, in person and in letters. Moreover, it knew of these letters because my consultancy obligations included a review of those letters. I had tried without success to get the Department to make that review rather than saddling me with it. Therefore, Mrs. Zusman and Ms. Ginsburg should have had at least an awareness of this lengthy and detailed correspondence relating to specifics of noncompliance. The first paragraph of Exhibit 2 states that it addresses specifics of noncompliance, beginning "I noted ... while reviewing" records I had just obtained.

76. The third paragraph refers to the many missing attachments and that for which the Civil Division now asks for an additional 30 days, a "large number of

surveillances, all Items of the request as well as records provided or to have been provided from the MURKIN records. (See also my 5/16/78 affidavit.)

77. Next ~~Net~~ these is specific reference to numbered records in connection with noncompliance and reasons for believing the records have to exist. I add reference to records that have to exist and to which there is not even a reference in any record that was provided. (There are no interviews with photographers, including the one who took the Life, Inc., pictures.)

78. On page 4 there is a reference to FBI records of which I knew from the FBI's source, records relating to prior knowledge of the assassination by an official of the international union that was involved in the strike that led to the assassination. I provided the name used by the person who claimed to have knowledge, suggested a name from the records I have that might be his correct name, and asked for a search of what I knew without question was withheld. My information was so detailed and so accurate I provided the name of the interviewing agent and I corrected SA Hartingh when he allocated the wrong field office to that investigation.

79. In my affidavit of May 16 I used Raul Esquivel, Sr., as an illustration of improper withholding and of noncompliance. On this page I provided details - not for the first time - complete with file and serial number.

80. After providing information about other still withheld records, again because my source was the FBI's source, I go into a matter that is intertwined with the pictures - with serial numbers - I provided the FBI. (Despite Mrs. Zusman's assurance to the Court in camera, in the six months since then my pictures have not been returned. By file number I here provide details of where copies of those pictures were sent and from where they could be retrieved. I believe my originals are in the unsearched files of the local FBI residency.)

81. The remainder of this letter provides specifics of noncompliance, all or almost all related to a means of locating the relevant records.

82. This, too, is anything but justification for the representation of my having provided "nothing."

83. First thing the morning following the November 11, 1977, Civil Division conference I wrote Mrs. Zusman (attached as Exhibit 4). I believe that writing

problems possible because we have so little time." (This is a reference to the in camera conference of nine days later.) I believe there is no reasonable doubt about my candor, my informativeness or my displayed willingness to be helpful toward effectuating compliance. I did detail widespread noncompliance and I did make an effort to reduce the possible embarrassment to the Department.

84. Later that day I wrote Mr. Lesar, providing other details that could help lead to a satisfactory solution prior to the in camera meeting .

85. To this point the FBI had insisted, untruthfully, that it has no name indexes. I also sent Mr. Lesar proof of the falsity of that representation. Based on this false representation, the FBI had professed a total inability to retrieve information by the name of the person.

86. Because the pre-law student who was trying to help us was not able to be present and because I did not anticipate that an internship would soon take all her available time, I wrote her the next day. I recounted some details of the November 11 meeting. One that is relevant confirms my clear recollection, that it is I who offered all the substitution for what was impossible for me, going to the Justice Building and working on a regular basis. Ms. Ginsburg's representation that I refused the Department's offer of sending a paralegal here is opposite the truth. I made that proposal and the Department refused it.

87. Bearing indirectly on this is what I wrote this student on November 13:

> What they wanted of us is a list of names about whom there should not be withholding. I declined to provide this but said I would without fee work with them as they came to specific names, telling them, where they think there is a privacy question, what I can recall. On the other hand I wanted to talk in terms of subjects of interest to me. The FBI claims it can't function this way. However, requests under FOIA are properly by subject. If you see any reference to any subject in which I express an interest, please note it, as well as the withholding of names and other records."

88. Attached as Exhibit 5 is a copy of the "talking paper" I prepared for the November 18 meeting, to present illustrations following what had been discussed at the November 11 meeting. When I heard from Mr. Lesar the day before the November 18 meeting I prepared the five-page memo "For Lynne Zusman and Bill Schaffer on Friday." (Not anticipating any use by me I was not careful to make clear carbons.)

89. The last three paragraphs of page 5, quoted in full below, express my

> The present basis problem is not that my subject knowledge is required for compliance. If I believed for a minute that this were the actuality I'd have grabbed at Bill's offer to hire me as a consultant. I have no question at all of his good faith in making the offer. My question is can it mean anything when I have this very long record of FBI stonewalling in the face of my having already done it so many times, as the beginning of this memo illustrates.
>
> As long as I can hear the wild elephants trampling in the forest and see no corral being constructed to confine them I see no point in spending any more time this way. I have told the FBI this often enough only to relent and give it more illustrations. Only to have them ignored, too. (I did this with other components more than a year ago.)
>
> As it is I work a long day still without being able to keep up with my own work. I work when I travel, when when as I shortly will do, when I have my weekly blood-test. I mean this literally. I work while I wait to be called and then while the blood is taken and then for the time required to be sure I'm not hemorraghing because of the high level of anticoagulent. I work when I use the exercycle, as required when the weather is bad. There is much I want to do. So what time I have is precious to me. I want no more wasting of it, as I hope you can understand.

90. The attached copy of the FBI's "MEMPHIS MURKIN FILES" list was given to it and to the Civil Division. This copy reflects the fact that all parts of the Memphis Sub G file had not been provided. It also supports my representation that, even without indexes, compliance by subject is possible because the FBI has subject files.

91. What may have escaped me then is the meaning of the last item, Sub Q. Its subject is "FD-302s (Interviews) Other Offices." One volume only was released. It is not possible that with all the many witnesses in the largest manhunt in the FBI's history and the large number of persons interviewed, all interviews by the other 58 FBI field offices could be contained in a single volume.

92. While on November 18 I did not accept the consultancy, I also did not reject it. Instead, I offered alternatives. Only one was working with a paralegal or anyone else on the Civil Division staff who could go over any records or questions with me. Another alternative was to consult by phone, to respond to questions and to provide any information I possess.

93. While I may not have found copies of all the letters I wrote Civil Division I have found others. Next in date after my November 25 letter to Mr. Schaffer is a short letter to him of December 3. I included several recently received pages, explained their bearing on noncompliance and repeated what I had already told him, "that getting the FBI to respond to what I have already given it

6), I again complained about having had no responses and said they left "no basis for assuming good intentions and every reason to believe the consultancy situation into which I have been forced is merely another device for noncompliance and for further stalling." Nonetheless, I made him aware of new proof of noncompliance in the report of the Department's Civil Rights Division, (CRD) which I had received and read. "The withholdings ... are ludicrous ... include what you will find in virtually all King biographies (but) are based on (b)(1) and (7)(C) ... despite what I've tried to tell everyone everywhere in the Department, in the most recent records released, the same unjustifiable withholdings continue. (They are) in part the subject of Congressional testimony, including by the FBI ..."

95. Despite my anger and the disappointment I express in this and in other letters, I met the responsibilities of a consultant, although by then I recognized that I had been saddled with a conflict of interest. I informed him about the Department's newest vulnerabilities, ranging from a cover-up report in which there was but a single sentence on the assassination to the specifics of unjustifiable withholdings from that report.

96. Prior to receiving Mr. Schaffer's secretary's letter saying she had forwarded my letters to Mrs. Zusman, I wrote Mr. Schaffer again. Both letters are dated the same day, December 29. I enclosed a copy of an earlier letter to SA Hartingh with regard to unjustifiable withholdings in Section 59, using it as a basis for showing that even when I may not have provided an exact Serial number the identification of the volume made location and identification a simple matter. This also reflects that I had reached Section 59 in reviewing my notes. (The carbon copy is too poor for xeroxing.)

97. Mrs. Zusman had spoken to me after the January 16 hearing in my C.A. 77-2155 and mentioned something about my writing her a letter. On January 18, 1978, I wrote and asked her to explain it. I never received any response. (Attached as Exhibit 7) If by some strange bureaucratic malfunction Mrs. Zusman received none of my letters to Mr. Schaffer, this letter leaves no doubt that she knew I was proceeding with the consultancy and that knowing this represented otherwise to the Court.

98. The first sentence of the third paragraph states that I had been working

with
Mr. Lesar "what I sent him relating to Section 60. This is the last sheet of notes I've gone over. And the worksheets with all the Sections and notes. With 60 I have made another review of the Section itself." Mrs. Zusman had asked that I write her through Mr. Lesar rather than directly so I had not mailed this directly to the Civil Division as otherwise I would have.

99. I also reminded her of my request for a demonstration of good faith. I suggested that compliance with one of the Items, surveillance, outside the MURKIN files could serve this end. I had written earlier on this without response. (See also my 5/16/78 affidavit.)

100. On January 23 I sent Mr. Lesar another progress report in the event he had inquiry from the Civil Division people with whom he was to meet.

101. While the immediate purpose of my January 27, 1978, letter to Mrs. Zusman was to protest an unjustified behind-the-back slur of me by a member of her staff, on the first page of that letter I reported having come to a point in the work where I required still-withheld records that the FBI had made public in 1975. I also reported that I had been shopping for a dictating machine because I could not use the defective tape recorders. (page 3) I gave her to understand that I would have a dictating machine in a day or so.

102. On this added basis Mrs. Zusman knew, despite what she told the Court, that I had been working, was making some progress and was making an expenditure to carry the work forward.

103. There remained even less basis for any question about this when on January 31 Mr. Lesar reported to Mr. Schaffer not only that I had been working but that as of a month earlier I had put in 80 hours. That Mr. Lesar had also informed Mrs. Zusman is revealed in his letter. He had explained to Mrs. Zusman what I had been doing when she asked. Mr. Lesar included a request for payment. He could hardly have asked for payment if I had not worked.

104. The behavior and the ethics of the government's lawyers in this case could hardly be more perfectly calculated to justify the Shakespearian prejudice, "First let us kill all the lawyers." From first to last they have presided over and connived in noncompliance. Yet this is an Act about which the President and the

United States Attorney John Dugan announced that, on the basis of an obviously false affidavit, he would move mootness. A legal Rube Goldbergism fashioned by the FBI's Office of Legal Counsel for him is that I had not guaranteed to pay search fees and had not made the requisite deposit. It was possible for the FBI to make this pretense because it violated the Code of Federal Regulations by not providing me with an estimate of the search costs and not specifying the deposit it desired. When I explained to AUSA Dugan immediately after that first calendar call that I could not write a blank check, that I had to be told the sum and would pay that sum on notification, he at first refused to communicate this to the FBI, then said he would, then, if the FBI is to be believed, did not inform the FBI. This was the second contrivance for the first of the as yet unended stalling devices.

106. When I finally got past that roadblock and Mr. Lesar and I met with FBI FOIA SA Thomas Wiseman and Office of Legal Counsel SA Parle Blake, I asked SAs Blake and Wiseman about this delay. SA Blake claimed it was only because I had made no deposit. I asked him why he did not accept my assurances of payment and why he had not provided me with the required estimate even after I asked this through AUSA Dugan. SA Blake's response was that he had not been informed of this. SA Blake also insisted that it was right and proper for his counsel not to have communicated my assurances of payment to the FBI.

107. This consumed the first several months of this case after it was in court. When I finally got the first few records what is public domain was withheld. To this day they have not been replaced, despite the holding of this Court that such withholdings are improper, despite the fine words of the Attorney General's policy statement, words made meaningless by the immunities of his subordinates and their living and thriving in the shadow of the ghost of the past that should never have been.

108. Month after wearying month, by one inappropriate device after another, because of an unended series of misrepresentations that dance across the pages of the transcripts to the tunes piped in falsely sworn affidavits, we got nowhere for who indeed prosecutes the prosecutor? It was a mockery of the Act, if not also of the Court.

of the request, as I then stated and as the government, especially the FBI, knew in making this substitution. Compliance is impossible if restricted to MURKIN files.

110. Then for almost a year I was flooded with paper I had not sought, as a substitute for giving me the information I did and do seek. Once again the patience of the Court wore thin and once again the government's lawyers were ready with another contrivance, stipulations to avoid a possible Vaughn v. Rosen order. The stipulations having been agreed to, they were first unilaterally rewritten and then grossly and openly violated.

111. As I read records delivered under the stipulations, I wrote the FBI informing it about noncompliances. The FBI's response was that I was not to inform it until it had completed all of what it called compliance. By that time I would have no way of recalling what I could write it contemporaneously. When the time period of the stipulations was past, the FBI blandly ignored what I had told it about noncompliance.

112. With these stipulations the Civil Division became more openly involved in the case. It, too, presided over the preparation of inadequate, incompetent and falsely sworn affidavits. One kind is in Exhibit 33 of my May 16, 1978, affidavit. Another is the May 8, 1978, affidavit of SA Horace Beckwith. With the Beckwith affidavit Civil Division exercised diligence - in preventing me from addressing it two days after it was executed, at the calendar call of May 10, 1978.

113. When the FBI can do nothing else to avoid the countless specific instances of noncompliance and improper withholding about which I have informed the FBI, Civil Division pretends to the Court that what I have provided is "incomprehensible." This is what Mrs. Zusman said on November 21. Yet not once has Civil Division or the FBI or anyone else written me to ask for any clarification. I have no single letter in which any Departmental component ever said that it did not or could not understand anything I provided in an effort to enable or facilitate compliance or in any complaint about noncompliance. The FBI and the Civil Division can't "comprehend" file numbers? Can't "comprehend" names spelled correctly?

114. It is a rhetorical question to ask why the Civil Division refused my offers of unpaid assistance that could lead to compliance while forcing upon me -

115. Through all the six months of this consultancy I not only could not find out its conditions, including the conditions of payment - I did not get a single response to all those letters that took so many hours of my time.

116. Knowing full well that compliance is impossible from and has not been provided from the MURKIN files, the Division has informed the Court that it will move for summary judgment. We have waltzed in a circle for two and a half years. The only difference is that now the baton is in dainty hands rather than those of a football bruiser.

117. My expertise is not limited to the subject matter of my information requests. As nother court said earlier this year, I was not without influence on the 1974 amending of the Act. I doubt there is a private person who has had more experience with the Act or with the means by which officialdom with something to hide seeks to circumvent the Act and only too often succeeds.

118. In the case that was so instrumental in the amending of the investigatory files exemption, C.A. 70-2301, the FBI told that court that if it were to give me Laboratory reports involving nonsecret methods the FBI would crumble into ruins and even its informant network would be left in a shambles. That Assistant United States Attorney actually reported a ruling by the Attorney General, that complying with my information request was against the "national interest." This, of course, is not an exemption to the Act. It is, in fact, the traditional dodge the legislative history reflects the Congress sought to end once and for all. Besides all of this, the Attorney General had said nothing on the matter.

119. There is a relevant parallel with this instance cause, where my request seeks similar Laboratory information. The Court was assured that I have been provided with <u>all</u> Laboratory records. The records I have been provided show the FBI <u>did</u> swab the barrel of a rifle it knew <u>could not have been used in the crime</u>. Its records show this rifle could not even be fired in the brand-new condition in which the FBI received it. The purpose of this swabbing was to determine if that rifle had been fired "recently." The FBI Laboratory also had the rifle the FBI claims fired the fatal shot. Faithful to Orwell, the FBI did <u>not</u> swab the barrel of its so-called fatal rifle to determine recent firing. And we are to believe that all relevant

event there is more than sufficient motive for this and for all the other extensive withholdings and noncompliance. But there is no basis for believing that the FBI does not know its business. Absent assurances that it did not do its job, it is reasonable to presume that the FBI did do its job. If it did, it has not provided relevant records.

121. This also is true of other Laboratory functions, such as recovering test bullets for comparison or for use in testimony at the expected trial. The records provided reflect that there was test firing of rifles not believed to have been involved in the crime but that no comparison samples were obtained and preserved from the suspected rifle.

122. This, not the claim to the right of "privacy" of the known agents involved in these tests, explains the withholding of their names from their own records, a practice that did not begin until after the Act was amended - and a practice that was persisted in after this Court held it might not be done, as my affidavit of May 16 establishes.

123. This litigation has been converted by the government into another means of accomplishing what early FBI records show to be its intent, to "stop" me because it does not like my writing.

124. Forcing upon me all those thousands of pages I did not request as a substitute for the information I did request was one of the means of frustrating my work and wasting an appreciable portion of the life I have remaining.

125. (While most of these pages are not of value in my writing, they are of considerable historical value. This imposes upon me the obligation of obtaining all that are properly releasable and of assuring their completeness and availability.)

126. Having forced all this extra work upon me, the FBI then undertook a campaign of needless and improper withholdings. The exemptions were systematically misused to accomplish this and to bog me down further. With the exception of the single newspaper story from which it had removed the name of one FBI agent ten times, I recall no single record that was replaced, not even in response to the directives of the Court on this. Indeed, long after the Court held that such names might not be withheld, the FBI persisted in withholding them.

128. Where someone was not liked by the FBI, there was no privacy to protect. The case of John Ray's barmaid in my affidavit of May 16, 1978, is typical. When the FBI wanted to apply pressure or extort revenge, the name of that woman was not withheld. When genteel white ladies in Memphis, including some of his political supporters, protested his policies to the Mayor of Memphis, their names not only were not withheld - they were indexed in the FBI's political files. Among the copies I gave the FBI are those of its release of defamations of black women. If they were black, unless they were informants or sources, they had no privacy. If they oonceived out of wedlock, even the names of their relatives are released. Black men are called pimps, dope pushers, criminals of various kinds, even "boy" and "monkey face," and there is no privacy concern for them by the FBI. It has released all of this and much more like it.

129. Yet after I filed a privacy waiver from James Earl Ray, the FBI withheld records relating to James Earl Ray on the claim of privacy.

130. White women seen with black men, even white women reporters, had no privacy for the FBI to safeguard after it devoted itself to prying into their lives, associations and beliefs. A white minister associated with black parishioners and black ministers and his life became the subject of FBI "law enforcement" investigation, without privacy withholdings and with defamations contrived and released.

131. These practices are not limited to this instant cause. The FBI did not like Marina Oswald because she objected to its treatment of her and initially refused to speak to its agents, although she always spoke to the Secret Service. Recently the vindictive FBI released all kinds of the most personal information about Marina Oswald to me and to others and placed it all in its reading room. Attached as Exhibit 8 is a single illustration of this, from FBIHQ file 105-82555, Serial 2514. There is no secrecy for this woman's sexual dreams or practices or partner. Yet it is relevant to nothing that was properly the business of the FBI. But the FBI could not get the particulars to Washington fast enough by mail. It teletyped these personal irrelevancies and now has made them public.

132. Exhibit 8 also fortifies similar records in my affidavit of May 16, 1978, in reflecting that FBI records on surveillance are so captioned and by this

as "untrustworthy and unscrupulous" because "he sought (sic) to involve the Bureau in the wiretapping probe by (Senator Edward) Long's Committee." When Mr. Fensterwald became counsel to James Earl Ray, it became proper for the FBI to respond to the inquiry of the Memphis/Assistant Attorney General, "that we furnish him with any information available concerning FENSTERWALD and his political linkings." The FBI complied. (Both records attached as Exhibit 9.)

134. A random additional illustration of the FBI's use of the privacy exemption is for one of the most public functions in the world, that of public relations and information director of a major publication. In Exhibit 10, the withheld name is that of Leonard Rubin. Mr. Rubin moved over to Playboy.

135. Another random example of "privacy" is attached as Exhibit 11. I had made this copy for another purpose. This record was processed long after the Court ordered that such FBI names not be withheld. There was no FBI appeal. The FBI merely ignored the Court. In this case the agent was in a liaison function.

136. There is another purpose for attached Exhibit 11. The FBI has engaged in systematic withholding of virtually everything, including the public domain, from or about other police agencies. I have previously set forth the FBI's refusal to ask the permission of the Royal Canadian Mounted Police to release to me its information which was provided to and used by other writers and the Memphis prosecutor. (The RCMP also held press conferences to promote itself, which the FBI did not relish.) In this record, long after the guilty plea, the FBI still sought to hog credit for itself and to diminish the credit accruing to the Mounties. It also sought to suppress Canadian information bearing on whether or not there had been a conspiracy.

137. There has been extensive misuse of (b)(7(D) in this instant cause and in others. I report above that in 1970 the FBI alleged its informant network would be destroyed if it released Laboratory reports relating to nonsecret processes. In the case Mr. Lesar filed when I was ill, C.A. 77-0692, the FBI provided affidavits attesting that even the release of the code identification of its informants would endanger these informants and, inferentially, destroy the nation's entire intelligence system. (Affidavit of SA Louis L. Small, 5/11/78.) But when the FBI has

what it is alleged to be in so many affirmations, this committee turned Informer Davis over to Mark Lane, who at that very time was blaming the FBI for the assassination of Dr. King. Secret Informer Davis complained to the FBI about the unprofessional conduct of former big-city detective turned House investigator, Eddie Evans. Sleuth Evans rode around ostentatiously in marked Birmingham police cars and then met with Mr. Davis, thus, as Mr. Davis complained, endangering Mr. Davis's cover. (Exhibit 12)

138. The FBI's objective, perceivable to a subject expert, was disinformation - to mislead the House committee. Mr. Davis had provided the FBI with poppycock gleaned from the press and inaccurate street information. Although to my personal knowledge the House committee did not need any aid in finding rocky paths on which to dash madly in all wrong directions, the FBI endangered Mr. Davis to provide still another bum steer on which the committee could waste itself.

139. My November 8, 1977, letter to FBI FOIA Supervisor SA John Hartingh regarding the informer Morris Davis is but one of many illustrations of the fact that I did provide specifics, that I did provide file and serial numbers, and that the letter is not "incomprehensible." As a result of this letter I received no other copies of any of the records mentioned, no letter of any kind from the FBI or the Civil Division and no request for clarification. I also include this letter to establish that representations to this Court about the alleged impossibility of responding to my communications are false representations. The fact is that there are a number of other files that should have been searched relating to this. Other FBI records in my possession list some of them.

140. These FBI FOIA people can't even write a straight letter - to me at least - if they see an opportunity to obfuscate or to stonewall or to inflate false, misleading and deceptive statistics. From experience and observation I have come to know that statistics are the FBI's answer to everything, its Fiddler on the Roof who stays there by tradition. A recent example is the FBI's letter of May 2, 1978. It was in "compliance" with my information request - of a decade earlier - for color pictures of some of President Kennedy's clothing, pictures <u>other</u> than those the FBI provided to the Warren Commission. Under date of May 2 I was sent five prints of Warren Commission exhibits. I responded on May 5, asking for what I had asked for,

to releasing about 100,000 pages of them or as though SA Howard had not testified in this instant cause in September 1976 that he was then making a third comprehensive review of the identical records. (He also testified that he was unaware of about 25 requests I had made for some of the records he was reviewing.)

141. Nor can the FBI keep straight books, at least relating to my payments. First it claimed it could not comply in this instant cause because I had not paid a deposit on search fees; then it gave me a sum and I paid it; then it assessed search fees and I paid them; and then, first when there was a partial remission of fees and later when there was a complete remission, they did not repay either the search fees or the other sums due.

142. As though it is the FBI's determination to underscore the preceding paragraphs, at the very moment I was writing them the mailman was delivering their latest flaunting of the Act, the classification system and E.O. 11652. This relates to a request I made of the FBI and other agencies involved in making information available exclusively to a scholar whose sycophancy has pleased more than one agency, including the FBI. (The FBI especially on the subject of blacks.) Edward J. Epstein had been provided with information relating to a Soviet KGB defector, one Yuri Ivanovich Nosenko. (Mr. Epstein also blew the FBI's agent code-named "Fedora.")

143. Nosenko contributed mightily to the problems of those officials who were determined to will a preconception into credibility. This preconception is that Oswald was "Red" and a "Red" agent.

144. Nosenko defected to the CIA in February 1964. The CIA made him available to the FBI, which performed most of the investigative services for the Warren Commission. The FBI reported to the Warren Commission that it had learned from this former KGB official that the KGB suspected that Oswald was an American "sleeper" agent. The FBI, fully aware that foreign intelligence is the domain of the CIA, made an unrequested arrangement for Nosenko to testify in secrecy before the Warren Commission. This fatted the CIA's fire. The CIA devoted the next several months to foiling Nosenko's testimony. The CIA's success was so complete Nosenko's name does not appear in the Warren Report.

145. When the subject of political assassinations heated up again in 1976,

dropping out of high school.

146. In his book and in ancillary writings and public appearances, Mr. Epstein credits the FBI with supplying him information, attributed to FOIA requests. He also credits the CIA in the same manner and in more, in making Nosenko available in person for interview. Simultaneously, the CIA has been withholding from me all of its records relating to Nosenko, in response to my request of almost three years ago. It and the FBI have not complied with my requests relating to the interception of Oswald communications, another element of the exclusive "FOIA" delivery of information to Epstein.

147. The FBI is not saying but its cooperation with Epstein, in the long tradition of its under-the-table deals only partly exposed in this instant cause, appears to have been motivated by its satisfaction with earlier similar arrangements. The CIA also is not saying, but Readers Digest was virtually a CIA house organ in the book KGB. For that book enormous quantities of secret FBI and CIA records were made available, together with a series of KGB defectors, including this same Nosenko. (This is known as the protection of sources and methods.)

148. Whether or not the FBI perceived political advantage or competitive advantage vis-a-vis the CIA in feeding Mr. Epstein, it has not denied providing the assistance with which he credits it. A total defense against my request for copies of the inform tion it provided him would be to state that it did not provide any such inform tion. Instead, it engaged in semantical obfuscations, which I appealed. (The CIA decided the request was for records it could not identify. The FBI alleged I was demanding research of it.)

149. After Mr. Epstein had drained the CIA cow of the "new," he started to milk those who had retired to pasture, like former Chief of Counterintelligence, James Jesus Angleton. Mr. Epstein's writings duplicate Angletonian views. Mr. Angleton is his hero.

150. In my experience in FOIA matters, it appears that the FBI's FOIA/PA branch could not function without the word "pertain." This word provides an inconspicuous means of rewriting FOIA requests.

151. The night before I received what follows I had read FBI responses in

FBI's performance.

152. In Mr. McCreight's letter to me of May 17, 1978 (Exhibit 13), which bypasses all the intervening communications and goes back to my request of March 9, 1978, what I requested is described as "for information pertaining to Yuri Ivanovich Nosenko." No longer am I allegedly asking the FBI to do research for me. And it would appear that I am no longer asking for what I did ask for. Again there is the substitution of what I did not ask for, "pertained" into this substitution.

153. I am informed that I am "aware" that "the documents which were presented to the President's Commission ... were placed in the National Archives," after which they were reviewed and at "The last review ... in December, 1975" were made "available to the general public."

154. Save for the fact that certain records are available, not one of these statements is factual.

155. Mr. McCreight states he encloses two records that were declassified in the FBI's December 1975 review, 'Commission Documents 451 and 651."

156. I obtained copies of these two records and of other relevant records from the National Archives in May 1975, not after December FBI review. The first pages only of these two documents are attached as Exhibit 14. They bear no classification markings of any kind. I published excerpts from these records in a book that went to the printer two months before the FBI now claims it declassified them for the first time. Moreover, as Exhibit 14 shows, neither record was ever classified.

157. The McCreight letter then confesses that in its supposedly complete disclosures of its JFK assassination records in its releases of December 7, 1977, and January 18, 1978, "These documents were not included." The reason, years after "declassification" of what had not been classified, because "Our worksheets pertaining to the Kennedy Assassination material ... show the documents were withheld" under (b)(1).

158. Exhibit 13 concludes with assurances to me that "a review of the file pertaining to Yuri Ivanovich Nosenko is being conducted to determine if any additional material can be released to you ... It should be noted that much of the file is classified pursuant to Executive Order 11652 ..."

160. The first pages of these newest FBI copies of these two records it made available to the Warren Commission are attached as Exhibit 15. Commission Document 651, which in this version lacks the markings of the FBIHQ file from which it was supposedly obtained, also lacks any classification. The declassification of the never classified is not in accord with the provisions of the Executive Order. Commission Document 451, which in the McCreight/FBI representation was declassified under December 1975 review, also lacks any FBIHQ file marking. However, it does not lack a "Secret" stamp apparently added after 1975 review and release. Under date of 7/13/77 it was reclassified by 2040 - two and a half years after my publication. At the time of apparent reclassification, the FBI's experts determined that it was "Exempt from GDS Category 2,3" and that "Date of Declassification Indefinite."

161. Not until May 8 of this year was this copy of this record declassified, regardless of Mr. McCreight's assurances. Then it was declassified by 4913. This is a spectacular history for a record never classified, a history not recounted in the covering letter.

162. Meanwhile, the heavy stones of the FBI's FOIA mill grind away, yielding not grist but the chaff of a request I did not make, in substitution for the embarrassing request I did make. This, too, is typical of my experiences in this instant cause.

163. Contemporaneous accounts attributed to the FBI report that these JFK releases were checked and rechecked. There also had been not fewer than the three reviews of these identical files, as SA Howard testified in September 1976, almost a year after this supposed FBI declassification of these records. In all of these FBI reviews (and others of which I know), two documents that had not been classified were declassified, reclassified, were exempt from downgrading and then remained classified as important national defense secrets when they had already been published and through all this were readily available at the National Archives, my original source. It cannot be believed that the FBI can repeat a single "error" so many times. But if it did, if it could, or what is no better, if its wrongful classification was deliberate - in any formulation, this illustration leaves no basis for ever taking

I ever found the record qualified for withholding at any time since the 1974 amendments became effective.

164. This flailing of the rubber stamps to make what was published into national defense secrets is not exceptional. Particularly is it not exceptional in this instant cause. Under the claim to "national defense" there is withholding in the most recent record of any significance I have obtained, the previously withheld CRD report to the Attorney General on the FBI's King assassination investigation. Some of what is withheld in it was released to me by the FBI almost two years ago. Other withheld content was featured in a widely publicized network TV series. The fact of FBI penetration of Dr. King's organization with live informants is withheld under (b)(1) in the CRD report. This is not withheld in the FBI records on which the CRD report allegedly is based. The names Levison and O'Dell, the men Director Hoover decided exercised "Communist" influence on Dr. King, the Hooverian basis for the FBI's unprecedented campaign against Dr. King and all the various forms of surveillance of him, are withheld under (b)(1) in the CRD report but not in the FBI's records that have been released. Mr. Levison is almost the central character in the NBC "docudrama," "King." This matter is public knowledge in countless books and news and magazine articles.

165. This illustration is not exceptional. There is a similar situation in the CRD's withholding of "information" provided by a former IRS investigator named Ken Smith, at the suggestion of Mr. Fensterwald. This was not authentic information. It was the fabrication of the youthful Byron Watson, who sought to use his concoctions for relief from a narcotics conviction. His mother joined in that campaign. I had checked and discarded all of this prior to the CRD's placing it in its records and in this instant cause withholding it. Later Dick Gregory found it to be a means of exciting audiences. His audiences ranged from the campus circuit to the White House. He was on TV with it. He led marches that were reported in print and on TV with it. He held press conferences with it. He was accompanied by Dr. Ralph Abernathy in some of these exploitations. In the end the Atlanta police investigated it, reaching my conclusions of more than five years earlier about it. All of this is withheld by CRD and remains withheld after appeal. CRD and OPR withheld the Atlanta police report

Neither Ken Smith nor the Watsons were only sources or even confidential sources. Moreover, the FBI's detailed investigation of the Watson tale, complete with his confession of fabrication, was released to me. If the reviewers are so cloistered they were not aware that all of this material was public, a sufficient indictment of the review and the reviewers, those same reviewers read and released the identical material in the FBI records. This is an incredible flaunting of incompetence in the initial withholding and in the review on merit. This is typical of the processing and the withholding of records in this instant cause.

167. Whether it be incompetence or in some cases contempt for the Act and for regulation, this attitude and these practices extend even to Executive Order 11652. It also is used improperly as a machine for withholding. Illustrative is Mr. McCreight's claim to use of it with the Nosenko records. Those records are not processed in accord with that Executive Order. Yet an affirmative duty is imposed on the FBI to abide by that Order and to protect what requires protection under that Order.

168. I believe it is relevant with regard to the foregoing paragraphs relating to Nosenko and the information provided to Mr. Epstein that when the FBI stonewalled my request for the JFK worksheets and other related records and I appealed, the FBI had every reason to anticipate that, especially with C.A. 75-1996 still in court, I would be exposing its misuses and abuses of the Act and its exemptions, of classification and of the Executive Order. This illustration is not an exception. It represents the rule that can be applied to the FBI's withholdings of hundreds of names, for example, from thousands of pages. The FBI is so arrogant that it withholds the identical names it has released. CRD is not arrogant. It is incompetent and self-righteous in its withholdings, in its interpretation of the Act and of the request and in its supposed search of relevant records. Civil Division and other components, like the offices of the Attorney General and the Deputy Attorney General, are content to be silent in their nonresponsiveness, pretending they have no records and saying nothing. These and other components do have records they have not provided. With regard to each I am not limited to personal knowledge. I have copies of records they continue to withhold.

to the Congress that I have been singled out for bad FOIA treatment. That testimony was by those who have presided and continue to preside over noncompliance in this instant cause, William Schaffer and Lynne Zusman. Allen McCreight also testified.

170. It was the proud boast of FBI Deputy Assistant Director McCreight that his lawyers made the impossible of Operation Onslaught possible. He so testified before the Senate Administrative Practices and Procedures Subcommittee on October 30, 1977. (published transcript, pp. 126-7, attached as Exhibit 16) By then his lawyer/agents had returned to field posts despite the suggestion of this Court that some be assigned to expedite this case. (When I repeated that suggestion to the FBI, I also was ignored. Instead, the number of analysts was reduced.) "The last of the (200) agents returned to their field assignments September 30, 1977," Mr. McCreight testified, following this with "All that remains to complete the last of the processing undertaken during Project Onslaught is final duplication of some materials to be released, finalizing consultations with other agencies regarding appropriate disposition of their documents ..."

171. As a result of this diligence and the abounding good faith of the Department and Bureau, there is now a request for an added 30 days for consulting these other agencies in this instant cause. It is only about eight months since these agents were turned loose. Based on Mr. McCreight's testimony, the wonder is that after more than two years of noncompliance the request is so modest, for a mere 30 additional days.

172. Having been informed of the state of noncompliance with my many and ancient requests by the Freedom of Information Clearinghouse and about the status of this case in particular, Senator Abourezk said he found the FBI's orders not to comply with my request in this case "very disturbing." Mr. Schaffer responded: "We had a meeting in my office with Mrs. Zusman ... Mr. Weisberg and his attorney. (As of the September 30, 1977, date of that testimony, our only conference with Mr. Schaffer was a month and 11 days in the future) ... I can assure you that the Department is going to try to do something about his requests as a whole rather than treating them piecemeal and processing them in strict chronological order, and this sort of thing." (pages 140-1 attached as Exhibit 17)

If it relates to the past, then all should have been at the top of any list. If it was a promise for the future, then there indeed was "no processing in chronological order." As a result I was compelled to file a number of suits that should have been unnecessary - in each case, to the best of my recollection, because the request was not even acknowledged. No complaint was filed until long after the time for response.

174. On the next page Mrs. Zusman provided an apt description of the new attitude toward FOIA in the Department and in her office: "innovative." She also termed it "successful." It is a fine statement of policy: "In other words, what I am trying to indicate is that there is a very broad area where we are trying to be innovative as to reducing the number of lawsuits by working directly with plaintiffs and plaintiffs' counsel. It can be very successful."

175. This "innovative" approach and this "successful" achievement, with regard to me, means that thereafter I had to file a number of lawsuits to obtain <u>any</u> response, <u>after</u> trying to be "innovative" by alerting Mrs. Zusman in person in advance.

176. In the one of these cases that has been before a judge, Mrs. Zusman was one of the six Department lawyers present to receive a judicial dressing-down and a defeat.

177. Before the Senate commmittee Mr. Schaffer testified about me and this case that "It is a unique request. It is a case of unique historical importance. Mr. Weisberg does have reason to complain about the way he was treated in the past. We in the Civil Division are going to try to straighten out all those cases."

178. Mr. Schaffer was as good as his testimony. He did "straighten out all of those cases." As this would be represented on a graph there would be a perfectly straight line, starting at zero and never once deviating from zero.

179. Applying Mr. Schaffer's testimony in this instant cause, his line is also perfectly straight, exactly duplicating the one in the preceding paragraph, from nothing to nothing.

180. The Department and its Civil Division did indeed "do something." It interposed itself between the FBI and this Court, thus assuring that there would be

I wrote him.

181. I do not allege that Mr. "Do Something" Schaffer was not a man of his word.

182. Mrs. Zusman testified that she "would like to expand on Mr. Schaffer's comments ... so that you can understand how importantly we in the Civil Division take our responsibilities under the Attorney General's guidelines sent to the Federal agencies as a memorandum of May 5. ... Mr. Weisberg has had for some time a number of lawsuits pending." She then testified to meeting with Mr. Lesar about the stipulations in this instant cause, that "we drafted a stipulation by the parties setting forth a variety of tasks and how they would be performed by the client agency, the Bureau."

183. The Bureau is not "the client agency" in this instant cause.

184. With regard to the stipulations in this instant cause, Mrs. Zusman added, "they had some problems ... At that time I discussed with them a number of problems ... Mr. Schaffer did make the time to see Mr. Weisberg and Mr. Lesar. We spent quite a bit of time discussing the problems. This is the type of effort we are now putting forth."

185. I am thoroughly impressed by this September account of a meeting I did not have until November.

186. It is true that we "had some problems" with the stipulations. As a result of "quite a bit of time discussing the problems," we still have no compliance with the actual stipulations rather than SA Matthews and Civil Division's revisions of them. I do not describe it as "innovative" because it is FBI/Civil Division SOP in all my cases. However, it is only nearing a year since the FBI sought these stipulations Mrs. Zusman negotiated. That they were not complied with during the matter of only months of her presiding over them is not all that bad a record in a case in which the original requests were made in 1969.

187. From this "type of effort" the Civil Division is "now putting forth" the courts will never want for clogging. The government will not lack FOIA statistics. Only requesters will lack. They will lack the public information they seek.

188. For requesters like me, this siren song to the Congress leaves us

189. The record in this case memorializes the legal profession as represented by Department lawyers. One of the earlier expressions is by the Department's Civil Rights Division's Stephen Horn. In a 1975 record I provided the Court he recommended that first they turn this request down and then they hoke up some legal contraption to cover the rejection. This is the same Stephen Horn who, being part of the Division that conducted the second most recent of the internal "reinvestigations" (some four of which coincide with my efforts) and thus has some familiarity with the volume of relevant records in this instant cause, filed an affidavit in July 1976 attesting that nowhere in the entire Department was there a record I had not been provided. Since then I have received close to 50,000 pages and there still is not compliance. Mr. Horn's own Division remains in noncompliance. His own Division still withholds the public domain. It continues to withhold what the FBI has disclosed.

190. The record in this instant cause is a tribute to the thoroughness and integrity of federal scholarship in an historical case, one Mr. Schaffer described as "a case of unique historical importance." To review the records to determine which might be released, the Department assigned those with total ignorance of this "case of unique historical importance." To guarantee that nothing would transgress against this ignorance those searchers of such good faith in their diligence avoided each and every one of the books on the subject, all of which were mentioned in the records they reviewed. All those books being in the Department's possession, none was consulted. Most being indexed, the indexes were not used. A consolidated index I had made and offered was not wanted and was refused. No wonder that even what I published remains withheld from me after appeal. Orwell's Big Brother could not have designed more perfect federal scholarship.

191. The record in this case represents a great cost to me. This cost was extorted by those of police-state mind and vengeful heart because they cannot stand in the sun of truth or permit themselves and their performances to be examined. All the government's lawyers in this litigation are fellow extortionists. They join also in the official effort to run the clock on me and what I can do. They can do this because they enjoy immunity. They may look forward to professional advancement.

dared [redacted] refer the Attorney General to a self-serving press release, a miserable scrivening glorifying the FBI for the capture of the lone suspect in this case when the FBI had as much to do with that capture as a wafted clove of garlic has to do with a stew.

192. The record in this case is not one of Mrs. Zusman's testimony to the Senate, a record of performance under the Attorney General's guidelines of May 5, 1977. Except, of course, that the FBI does release its vilifications of those it does not like, whether they be blacks or Marina Oswalds or Mr. Fensterwald - or me.

193. "What can I say?" AUSA Dugan responded when I first sought to inform this Court that it was being misrepresented to. Then Mr. Dugan said no more. Later, to his peers, in my presence, he said that he was foreclosed in cross-examining me on an earlier occasion. The record will show that he was offered a continuation of the cross-examination by the Court and that he was not up to it, having come to a point where he could no longer practice professional football tactics in court.

194. The record in this case is also one in which the Department's lawyers continue to pretend that the sole respondent is the FBI. Thus they announce intent to move for summary judgment without compliance from the other components of the Department. Even this is based on a record in which they have not withdrawn a single one of the chain of dubious affidavits. Instead, they burden the record with more dubious affidavits while exercising due diligence to assure that none executed subsequent to my comment on Mr. Horn's is a first-person affidavit.

195. This is also a case in which there can be no personal profit for me, regardless of the outcome. It is a case from which the writing upon which I have been engaged can never recover. This was the FBI's early objective, to "stop" me and my work. It is a case in which my perseverance is not for materials for writing. I continue my efforts, slowed but not stopped by age, health and fatigue, at the cost of my writing. I do not lack for literary materials. I continue my efforts in the spirit of the Act, in pursuit of the purposes of the Congress in the enactment, so that the people may know what their government does and how it functions when faced with a great crisis. To this end I have already given away every record I have obtained and every record I will ever receive. From much experience, observation and

no foul libel, no dirty trick, no stonewall I will not face.

196. The time limit Mr. Lesar imposed upon my providing him with my affidavit of May 18 relating to my prior consultancies did not permit my informing the Court of the purposes to which I intended putting the funds the Department's consultancy would yield. Despite my circumstances, my first desire was to use it to enable Mr. Lesar to have that much support in his unsupported FOIA efforts. Then there was the possibility that I might be able to make an arrangement with a gifted young lawyer whose appeals court clerkship is about to end for him to assist Mr. Lesar and me in this FOIA work. I also had hoped, because this young lawyer is an accomplished writer, that he might also elect to use information I have obtained over so many years to add his writing to what I may yet be able to write. The Department's refusal to respond to my inquiries about pay or to formalize the consultancy prevented me from entering into that arrangement. This arrangement also would have furthered the purposes of the Act.

197. In my affidavit of May 16, 1978, I provided information relating to surveillances on James Earl Ray and on the FBI's providing of information to writers. Both subjects are Items of my request. The MURKIN file holds records relating to both subjects, self-servingly only with reference to information provided to writers. There has been no direct compliance with these Items.

198. The FBI manipulated the news with great success. Simultaneously, it created records stating the opposite.

199. Records I have already provided to the Court reflect that there was continuing high-echelon FBI longing for writing on the King assassination, particularly in a book or books, that would praise the FBI and its Director. In unguarded moments, as in Exhibit 24 of my May 16 affidavit, there was an infrequent slip. In that record the FBI's chief leaker of the period, Associate Director Cartha DeLoach, wrote what in plain English says we can do this and we can get away with it because we will not be caught at it. This reflects FBI practice and its knowledge that those writers to whom it provided information under the table would not reveal that the FBI was their source.

200. FBI practice with writers and its creation of records with which to

nations. There was a regular unattributed outpouring from the FBI. When, as I have stated, it was desperate because its greatest manhunt in history was getting nowhere, it seized upon the pointless and irrelevant suggestions of concerned citizens and, after massive research projects, put them out as "news." Thus the suggestion of several worried Americans, that James Earl Ray was a devotee of Ayn Rand, led to a hasty reading of her work, to distributions to the field offices of this "research" and to numerous stories in which the alias Eric Starvo Galt was attributed to her characters. Even the accident "Starvo," a misreading of an actual signature, was attributed to her "Stavro."

202. FBI practice of creating false and self-serving records is exemplified by several records I obtained in the FBI's January 18, 1978, releases of Kennedy assassination records. Mr. DeLoach wrote a memorandum reporting one of his many meetings with then Minority Leader and Warren Commissioner Gerald Ford. Mr. Ford was an FBI inside stoolpigeon on the Commission, according to these records. (Exhibit 18)

203. The FBI had prepared a five-volume report later known as Commission Document 1 or CD1. Mr. DeLoach represents that Mr. Ford was opposed to any publicity on this report. Of this, Mr. Hoover wrote, "This is my view point, too." (sic)

204. Another of that series of records is a Washington Star story headed "Piece of Oswald's Shirt Found Snagged in Rifle." (Exhibit 19) The FBI copy of this December 5, 1963, story was mounted, circulated and in time reached Mr. Hoover. Mr. Hoover wrote on it, "It astounds me how some of the above has already reached the press."

205. This article was written by Jeremiah O'Leary, Jr., who is one of the writers listed in my request.

206. In its first paragraph Mr. O'Leary's story gives as its source "the FBI report of the assassination."

207. This leak and others like it, which were several days prior to the receipt of that report by the Commission, was the subject of a supposed FBI investigation. It was of concern to Members of the Commission. They discussed it at an executive session. The then Deputy Attorney General, who was later Attorney General

208. Another of these records was embarrassing to Mr. O'Leary. It cast him in the role of an FBI operative in Dallas at the time of the assassination.

209. When it was arranged that the records I have obtained in this instant cause be credited as an "exclusive" to United Press International (UPI), attention was drawn to a series of records reflecting that prior to publication Mr. O'Leary submitted to the FBI his article for the Readers Digest issue dated August 1968.

210. It is well known that Mr. O'Leary personally enjoyed a cooperating relationship with the FBI and the CIA. It is well known that the Star also had a long-time cozy relationship with the FBI. It is well known that in news accounts, reviews and articles, Mr. O'Leary's writing is of three-monkeys character: he sees no evil, speaks no evil and hears no evil about the FBI or the official accounts of the political assassinations.

211. This can be attributed to coincidence, that he just happened to agree with those who were his regular sources and had been for years, those who gave him a competitive advantage and exclusive stories. But the inference of prior FBI censorship in the submission of his Readers Digest article on James Earl Ray smacked of prior censorship and a payoff. It was embarrassing to Mr. O'Leary.

212. When he was questioned about this by other reporters, Mr. O'Leary's explanation was, "I got it all from the FBI." This is how he sought to assure his peers that he had not submitted to censorship in return for writing what the FBI wanted to see printed in the Readers Digest, praise of it and condemnation of Mr. Ray.

213. In blurting this out, Mr. O'Leary gave the lie to the FBI's claim that it gave nothing to other writers or to him, its false response to my information request.

214. In connection with surveillances, my May 16, 1978, affidavit sets forth how all of James Earl Ray's mail was intercepted and copied by the sheriff and that this included Mr. Ray's defense correspondence - even his letters to the judge. I also explained how Mr. Lesar and I learned about these surveillances and how we obtained copies of some of them from the Memphis prosecution. I attached a copy of one of these intercepted letters relating to prejudicial pretrial publicity from the MURKIN file because, as I stated, copies of these interceptions were given to

both made by the Memphis prosecution before the "registered" letter was placed in the mails.

216. On the first page of his letter, Mr. Ray singled out "One article in the August issue of the Readers Digest by Mr. Jeremiah O'Leary," saying of it what was an understatement, "I am sure you would agree that the article could not have been written without the assistance of someone in the Justice Dept."

217. Mr. Ray concluded, "I believe if these type of articles don't stop I mite as well come over and get sentenced." (sic)

218. In the end, this is exactly what happened. There was no trial.

219. In large measure, this is due to the FBI's secret news management and manipulation, especially through Mr. O'Leary and the Readers Digest in that August 1968 issue.

220. There was a virtual torrent of such articles. All portrayed Mr. Ray as guilty. Most represented the FBI's performance as a superspectacular of James Bond-J. Edgar Hoover tradition.

221. The FBI's operations with Mr. O'Leary and the Readers Digest and with others is more than news management. It amounts to the manipulation of the system of justice.

222. I believe this and the embarrassment its hidden records would cause explain the FBI's false representations to this Court, the FBI's claim that it provided no assistance to any writers.

223. The FBI also has a filing system designed to enable it not to retrieve what it wants not to retrieve.

224. In this instant cause the FBI also refuses to search any HQ files other than those it calls "central."

225. To illustrate how the "filing" system works, while I have found directions for the duplicate filing of a single domestic intelligence report in more than 50 files, all identified by number, I have found directions to file in "dead" files, to start "new" dead files, and I have even found directions to file a single record in as many as three different, numbered "do not file" files.

226. Among the files the FBI has refused to search, as I have stated before,

operations. Their names and their initials appear on many records of this nature that I have examined. The names and initials of Assistant Director Al Rosen and his associates of the General Investigative Division also appear on many records relating to seeking and obtaining publicity favorable to the FBI. The FBI refused to search the files of the Domestic Intelligence Division. There are Items of my information request that are of domestic intelligence nature.

227. FOIA Supervisor SA John Hartingh told me that he had been assigned to the Bishop operation. SA Hartingh claimed that there are no files there to search, that its only records are temporary records and that these are soon discarded. This would mean that it had virtually no relevant records because there are so few in the MURKIN file. SA Hartingh's representations are not in keeping with the reputation of Director Hoover, who was also known as the greatest file clerk of them all.

228. Relating to the crime and its investigation, which are included in my information request, FBIHQ assigned a special inspector to supervise the investigation, initially from Memphis. There has been no search of his files. In fact, his name is barely mentioned in the records provided. He is virtually a nonperson in the MURKIN file.

229. There was no search of the files of the FBI's Civil Rights Unit, although as I have stated earlier it kept a "tickler" system on 35 different subjects relating to the assassination and its investigation. The file number "44" represents Civil Rights. The FBI's captioning includes "RM" or Racial Matters.

230. I believe that the reason the FBI pulled a switch from Item response to offering its MURKIN file and misrepresented to this Court that compliance would be effected from the MURKIN file is to avoid compliance and to avoid providing what is not exempt under the Act and is embarrassing to the FBI.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 23rd day of May 1978 deponent Harold Weisberg has