UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR, Plaintiff, v. U. S. DEPARTMENT OF JUSTICE, Defendant	Civil Action No. 77-0692

AFFIDAVIT OF HAROLD WEISBERG

My name is Harold Weisberg. I reside at Route 12, Frederick, Maryland.

1. My prior experiences include those of investigative reporter, Senate investigator and intelligence analyst.

2. From the time of the assassination of President Kennedy, I have been engaged in researching, investigating, writing about and publishing books relating to the assassinations of President Kennedy and Dr. Martin Luther King, Jr. My work is not, as is most of the work in the field, of the genre of detective-story fiction. It is an in-depth study of the functioning and nonfunctioning of the basic institutions of our society. I regard the assassination of a president as the most subversive of crimes in a representative society. I have come to believe that in these times of great stress our basic institutions failed and that these failures, in turn, present a great threat to free and representative society.

3. The pursuit of my endeavors had led to much personal experience with the Freedom of Information Act, with efforts by various government agencies to subvert and circumvent it and to an understanding of the various devices by which these ends are sought and sometimes accomplished, devices now almost stereotyped.

4. Mr. James H. Lesar, the plaintiff in this instant cause, is my friend, associate and counsel in FOIA cases. He represents me in C.A. 75-1996, a case in which I seek from all the various components of the Department of Justice, including the FBI, information relating to the assassination of Dr. King.

5. I have personal knowledge of this instant cause because it is an outgrowth of my C.A. 75-1996. I believed that my request included all official reinvestigations of the FBI's King investigations. When that court held otherwise, I was not well. I was more limited in what I could do than I had been. Mr. Lesar therefore filed

C.A. 77-0682 in his own name, to relieve the burden on me. However, he provides me with the originals of all the records he receives. I provide him with copies and I am depositing the originals in the archive that has been established for my records at the University of Wisconsin-Stevens Point. Other sources of my personal knowledge include as defense investigator in the case of Ray v. Rose in federal district court in Memphis, Tennessee. I conducted the investigations that led to the success of the habeas corpus effort and the investigation on which the two weeks of evidentiary hearing in October 1974 were based. I participated in all discovery in that case jointly with Mr. Lesar.

6. The length and detail of this affidavit reflect my concern over what I regard as continuing and deliberate efforts in certain FOIA matters by the Justice Department and by the FBI that endanger the Constitutional independence and integrity of the judiciary.

7. In the subject matter that is before this Court, I have what the Department describes as "unique" expertise. I have had personal experiences and have performed work that I believe are duplicated by no other person. Explication of this follows throughout this affidavit. While I am aware that lengthy documents are not preferred and that they do require time for reading and comprehending, it is not my intention to take the time of this Court needlessly. I am a subject expert, not a lawyer. I draw on considerable personal FOIA experience. My purpose is to inform the Court to the best of my ability. As best a nonlawyer can, I seek to restrict myself to what is germane and what I believe I should provide the Court for its understanding and for its protection.

8. I have read the Department of Justice's Motion for Summary Judgment (Motion), its Reply Memorandum in Support of Its Motion for Summary Judgment (Memorandum) and the attachments to both. The Motion, the Memorandum and their attachments are entirely consistent with my long experience with the Department and the FBI in FOIA requests and litigation.

9. The FBI is the tail that wags the Department dog. Government lawyers represent to courts what the FBI wants represented, regardless of truth or falsehood.

10. Government lawyers regularly accept and file nonfirst-person affidavits knowing well that those of first-person knowledge are available. This enables the filing of misleading, often untruthful, affidavits. (A common form is illustrated in this instant cause by SA Horace P. Beckwith. He attests that "I caused a search to be made," in substitution for the affidavit of the FBI SA who could affirm, "I

personally conducted the search.")

11. Within my personal experience government counsel have made deliberate misrepresentations to courts to acceomplish the withholding of information the FBI wants to withhold.

12. In one case (C.A. 2301-70) government counsel stated to that court that the Attorney General had made a finding that what I sought was against the "public interest." This excuse for withholding public information was specifically prohibited in the legistlative history of the Freedom of Information Act. Besides, the Attorney General had done no such thing.

13. That same year (in C.A. 718-70) a Civil Division lawyer filed an affidavit in which he swore that he personally had provided a record that, in fact, he personally had refused to provide. That record was mailed days later, with a covering letter.

14. In C.A. 75-1996, which is for records relating to the King assassination, I recently prepared an affidavit addressing such practices in it. By "such practices" I meant what I believe exceeds proper bounds of vigorous advocacy.

15. In C.A. 75-1996 the Department was faced with the consequences of two and a half years of its own and FBI stonewalling and unjustifiable withholdings from many thousands of pages and with noncompliance coming from several Departmental substitutions for my actual request. The Civil Division then contrived a situation in which I am forced to be its consultant - in my case against the Department. The Civil Division represented what is not true, that it required my expertise and "unique" subject matter knowledge to stop the "games" the FBI was playing. In the six months that followed, the Civil Division did not respond to a single communication from me, did not compel the FBI or any other component to produce a single withheld record and did not replace a single one of the thousands of pages of records from which there were unjustifiable withholdings. In fact, for these six months I was unable to learn anything about this consultancy, even how much or when I would be paid. I also have not had the repayment of the nominal expenses I incurred at the outset. While I was providing the Civil Division with regular progress reports, it was representing to that court that it was unaware of whether or not I was proceeding with the consultancy.

16. Two Civil Division lawyers testified before the Senate Subcommittee on Administrative Procedures and Practices on October 6, 1977. Faced with questions about noncompliance with some 25 of my requests, some about a decade old, these lawyers

testified to the Senate that they were doing something about that matter. On January 16 of this year, in C.A. 77-2155, the Civil Division assured this Court that, although as of then I still had not been provided with the information sought in any one of those requests, they were then accomplishing compliance with the second of the FBI's releases of records relating to the assassination of President Kennedy. That was a false representation. It was not possible to comply with those requests by giving me the second of these releases.

17. As printed by the Senate, this October 6 testimony states that the Division's Deputy Chief had met with me to work matters out. In fact, we did not meet for another month after this testimony, not until November 11. Those matters still have not been worked out. I am still unsuccessful in obtaining public information requested a decade ago. I still do not have copies of records that were provided to later requesters. United States Senators interested in the Act will be deceived and mislead by this testimony which clearly was edited to make it misleading after it was given.

18. Within my experience government counsel have gone to my counsel's home the night before a court appearance, handed him several hundred pages of uncollated technical data that I had not requested, and then represented to that court that I was ungrateful because I had been provided so many pages and I still was not satisfied. It is as a result of such practices that this case (C.A. 75-226, formerly C.A. 2301-70) is now eight years old and is before the appeals court for the fourth time.

19. I was before this Court in C.A. 2569-70. On the government's assurance that it would take certain photographs of President Kennedy's clothing for me, this Court dismissed that case. The government gave this Court false assurances. It had not informed this Court that it had destroyed some of the evidence I sought in C.A. 2569-70 and thus could not photograph it. In addition, it changed controlling National Archives regulations after represeenting falsely to this Court what was required by the then existing regulations. The ex post facto change made the regulations consistent with the false representations to this Court.

20. These are not all-inclusive illustrations. There are numerous other such illustrations.

21. I believe I am unique in the knowledge I have acquired in these cases and in the expertise credited to me by the Department of Justice.

22. In C.A. 75-226, which is the first case filed under the Amended Act,

I seek the evidence I sought in C.A. 2301-70, which is the case cited by the Senate as requiring the amending of the investigatory files exemption of the Act.

23. In C.A. 75-226 governmentt counsel misrepresented to that court with consistency. The Department also filed a series of false affidavits. In one instance, an FBI agent swore that certain tests the resultssof which I seek had been performed and that they had not been performed. Another then retired FBI SA testified to still a third version.

24. When I provided affidavits to that court establishing the infidelity of the FBI's affirmations, the government made this response:

> In a sense plaintiff could make such claims ad infinitum since he is perhaps more familiar with events surrounding the investigation of President Kennedy's assassination than anyone now employed by the FBI.

25. The Civil Division has bestowed similar credentials upon me in my C.A. 75-1996, as stated above in Paragraph 15. It represented to that court that I am essential to compliance because I am possessed of unique knowledge and could perform services the Civil Division could not obtain from the FBI. As a result I have been the Department's consultant since November 21, 1977.

26. In this affidavit I draw upon the personal knowledge of fact relating to the crimes, the official investigations of these crimes and records of these investigations and upon a decade of personal FOIA experiences.

27. Records relating to political assassinations appear to be special FOIA cases to the government. In all my many cases there is not one in which there has not been false official representation. It is commomplace for the agencies involved in the investigations to deny the existence of records I seek. The two recent examples of this came to my attention on May 25 and 26. One, before this Court, is the case in which Michael Levy is the plaintiff. My knowledge of the Levy case is limited to what was reported of what transpired in court on May 24.

28. My prior requests for the records Mr. Levy seeks are without compliance by the Secret Service, the FBI and the CIA. These requests go back more than a half-dozen years.

29. I was assured by the Secret Service that it would provide me all the information it had relating to the assassination of President Kennedy by deposit in the National Archives. Based on this assurance, I filed no FOIA suit against the Secret Service.

30. My requests of the CIA include every record of any form or source

relating to the assassination of President Kennedy. There has been little compliance. I have not received the records Mr. Levy seeks. (In all cases, going back to early 1971, the CIA has failed to comply.)

31. In C.A. 75-2155 this Court was assured by the Civil Division that providing me with FBI records that were to be released two days later would comply with some 25 requests I had made of the FBI. It is not possible to comply with my requests from those records. For example, since January I have received only five photographs of President Kennedy's clothing - photographs I stated I did not want substituted for photographs I stated I do want. There has been no other FBI "compliance" except as will be detailed below relating to "compliance" with regard to Yuri Nosenko.

32. It is my experience that there is no compliance until suit is filed. It is my experience that once suit is filed the government still seeks to avoid complaince, particularly with subject experts like Mr. Lesar and me.

33. The second example referred to in Paragraph 27 is for records that were provided to another requester, records I asked for in C.A. 75-1996. When these records were provided to Morton Halperin and the Center for National Security Studies, they received extensive attention. Of all the records included in that request, these alone received any press attention of which I know. These are records from former Director Hoover's files. I made repeated requests of the FBI for the searching of files it refused to search, including those of Director Hoover. Even after the FBI searched Director Hoover's files and provided copies to Mr. Halperin, it did not provide me with copies.

34. These and other similar records remain withheld from me even after their 1975 use by the Senate Select Committee on Intelligence agencies (Church committee). It is I who informed the Washington Post that the only records of those released to Mr. Halperin about which it asked me and about which it reported were in the record of the Church committee. (Story attached as Exhibit 1.)

35. For more than a decade these discriminatory practices have been hurtful to me and the work I seek to do. They also limit the services I can render the press.

36. In this Halperin case I believe that the practice results in "news management" and in the killing of major-media interest in other important records within those released. Repetition of what had already appeared in the press did not result in any new exposure of FBI misdeeds. I believe that this accounts for withholdings from experts like Mr. Lesar and me.

37. Another means by which the Department circumvents or frustrates the Act and seeks to misuse the courts to deny public information is to file false or misleading affidavits and then for government counsel to extend what these affidavits can be interpreted as meaning. Examples in the instant cause relate to the (b)(1) and (b)(7) exemptions.

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38. In not one of the Department's affidavits in the instant cause is there an unequivocal affirmation that the withheld information is not public domain. In not one of the affidavits is there an unequivocal affirmation that the affiant even knows what is public domain. In fact, the public domain is withheld.

39. Instead of such an unequivocal statement, that what is withheld is not in the public domain, there is the evasion of the affidavit of James P. Turner. It states no more than that the information "is not known to be within the public domain." Mr. Turner does not state this of his own knowledge. He does not state whose knowledge he believes it is or upon which he draws. That the Office of Professional Responsibility (OPR) Task force personnel did have such knowledge is withheld from the Court. One proof of this knowledge, its bibliography, is attached as Exhibit 2.

40. This bibliography discloses the use of public sources. it also discloses the avoidance of important public sources. One is the record and report of the Church committee. Another is my book, FRAME-UP, the only substantive work not in accord with the official explanation and "solution" of the King assassination. Another and an important one is the transcripts of the two weeks of evidentiary hearing in Ray v. Rose in federal district court in Memphis during October 1974. (If the Department did not have these transcripts, they are with the clerk of the court. I have copies and would have provided them, as I did to the House Select Committee on Assassinations even though I oppose it.)

41. Other OPR knowledge of the public domain that is circumvented in this instant cause is reflected on pages 12 and 13 of the OPR report, attached as Exhibit 3. Sources cited in Exhibit 3 did make public what the Department withholds in this instant cause.

42. Another means by which the Department seeks to mislead and misinform this Court by affidavits is by providing affidavits executed by those who do not have first-person knowledge instead of providing affidavits by those who do have first-person knowledge. This is standard Departmental practice in my FOIA cases. An example in this instant cause is the affidavit of FBI SA Horace P. Beckwith. It is not a first-person affidavit. That it is false, misleading and factually incorrect

is addressed below.

43. A variation on the practices reported in the immediately preceding paragraphs is represented by the affidavit of Shelby County (Memphis) District Attorney General Hugh M. Stanton, Jr. In Mr. Stanton's affidavit he and the Department withhold any account of his unusual personal involvements in the King assassination case and his personal knowledge that some of the information withheld is in the public domain. In later paragraphs of this affidavit I state personal knowledge of these involvements, in addition to what I state in Paragraph 31 of my affidavit of May 22, 1978.

44. Affidavits not based on personal knowledge are used to justify the withholding of the public domain. This withholding of the public domain extends into the uses of exemptions (b)(1) and (b)(7). As best I can determine because of the nature and extent of the withholdings I believe the most extensive withholding of the public domain is by use of the privacy claim. The Department states its withholding under the privacy exemption is necessary "because [its] disclosure could cause serious damage to valued reputations or at the very least could lead to embarrassment or other personal discomfort." Nothing could be more opposed to my extensive FOIA/PA experience with the Department and the FBI, including in C.A. 75-1996, for records related to the King assassination.

45. Departmental and FBI uses of the privacy exemption are consistently inconsistent when not downright ludicrous, or, with the FBI, the playing of dirty political games. The right to privacy is a proper concern = if there is privacy to protect. The record of the FBI is of not protecting the privacy of those it does not like, not even from its own fabrications. It uses privacy claims to make work, to harass, to inflate statistics relating to the costs of FOIA requests and to withhold what is not within the exemptions. With regard to the King assassination investigation and the records generated by its own campaign against Dr. King, the withholding of what is well known to be within the public domain is commonplace. It exists in this instant cause. So determined is the FBI to misuse this exemption that in C.A. 75-1996 it refused a consolidated index of the books on the assassination of Dr. King to be able to continue to withhold the public domain. At no point in the processing of something like 50,000 pages did it stop withholding public knowledge.

46. With regard to King assassination records the FBI withholds from me under claim of privacy what is public in all the books on the subject. Virtually

all relevant names in the FBI's records are in these books. The very first records provided to me in C.A. 75-1996 withheld names I published and in connection with the information I also published. These names and this information were included in news accounts the FBI later provided from its clipping files. Those initial records in which the FBI practiced unjustifiable "privacy" withholding have never been replaced. This refusal to replace records from which there was improper withholding is virtually total and continues as of this date. In the most extreme forms the FBI withholds what another writer published from its records and what I published. After I sent it copies of my publication and even of a phone book the listing in which it withheld, it still persists in these "privacy" withholdings.

47. There must be thousands of pages of records for which I was initially charged 10 cents a page in which the FBI withheld what was extraordinarily well known around the world. When I discovered this and when the FBI then refused to replace any of the pages on which it had practiced these unjustifiable withholdings, I asked it to use the indexes of the books on the subject. It is after FBI refusal to consult the indexes in the books it already had that I had the consolidated index prepared.

48. The FBI is so totally dedicated to misuse of the privacy exemption with King assassination records that when I provided it with its own internal records reflecting its knowledge that it was withholding what was publicly known and its own admission that it would have to reprocess those records, it still refused to reprocess those records.

49. There is very little relating to the assassination or to the FBI's campaign against Dr. King that is not within the public domain.

50. With regard to political files relating to the King assassination, the FBI provided me with copies of its records disclosing:

A. The names of black women who are called prostitutes.
B. The names of black women reportedly sleeping with named black men to whom they were not married.
C. C. The names of black women who conceived out of wedlock, complete with details that include the names of relatives and later information relating to the child.
D. The name of a white woman reporter in slurring reference to her being seen with black men.
E. The names of middle-class white women in Memphis, including supporters of the mayor, when they disagreed publicly with his policies that caused the sanitation workers' strike that in turn led to Dr. King being killed in Memphis. (In this case the names of all these white ladies were indexed in the FBI's political filed.)
F. The names of black men who are described as "monkey-faced," "good boys" when their beliefs were approved by the reporting FBI agents, pimps, drug-pushers or addicts, and criminals of various sorts.
G. Political defamations of white as well as black clergymen who supported the striking sanitation workers.
H. Where a white minister supported black efforts at self-improvement,

there was extensive FBI investigation to label this white minister as "red." His name is not withheld.

I. Because a black Memphis minister was a community leader in support of the sanitation strike and of efforts to improve the entire Memphis community by creating new employment and educational opportunities, he became the subject of extensive FBI investigation. When he was reported to be planning to attend a religious peace meeting in Prague, he was labeled "red." There was widespread distribution of these and other similar records.

51. The extent of the FBI's domestic intelligence activities in Memphis is incredible, as is its disclosure of personal information and misinformation about countless private matters, including personal and political associations and beliefs. Where these people held views or engaged in activities not approved by the FBI, there was no privacy concern, no withholding of names, often with addresses, and there was widespread distribution.

52. The FBI's concern for the privacy rights of those it does not like is so great that when I sought to obtain all its records relating to me (and the request was more than two years old) in order to be able to file a correcting statement, the FBI refused to respond to my letters. Mr. Lesar also received no response. The FBI then released false and defamatory records, with some overt fabrications by the FBIHQ.

53. One such illustration is the total fabrication that my wife and I celebrated the Russian Revolution every year. As best my wife and I can figure out what was corrupted into the deliberate defamation, it was a religious outing after the Jewish high holidays. (These do not coincide with the time of the Russian Revolution.) Rather than reds" our guests were Washington area Jewish military service personnel and their families. When my first book critical of the official investigation of the assassination of President Kennedy was attracting attention and the White House became interested, this is included in the defamations the FBI gave President Johnson.

54. Another illustration is a deliberate FBIHQ fabrication of nine years ago, clearly designed to hide from the Justice Department what subsequently became known of the violence the FBI precipitated as part of its "Cointelpro" activities.

55. J. B. Stoner, who prides himself on being a racist and an Anti-Semite, told me of the disclosure to him of the fact that several men identified as FBI operatives had sought to entice him into acts of racial violence. Nine years ago this might well not have been believed in the Department. Since then, including from Congressional investigations and from information requests, these FBI practices have become well known. The FBI lied about and defamed me to continue to hide from the

the Department its inspiration of violence and other criminal acts. In fact, when the Internal Security Division reported what I had told it to the FBI, the FBI top brass then created false records in which it is represented that I, a Jew, was conspiring to defame the FBI with a man whose belief is that the only thing wrong with niggers is Jews.

56. Other FBI records relating to me range from careful distortions to outright falsehood.

57. The FBI also does not like Bernard Fensterwald. Mr. Fensterwald and I had been part of the pro bono Ray defense. Mr. Fensterwald also had been chief counsel for the Senate committee that investigated FBI wiretapping activities when its chairman was the late Senator Edward Long of Missouri. Mr. Fensterwald organized a group called the Committee to Investigate Assassinations (CTIA). When Mr. Fensterwald became chief counsel to James Earl Ray and the Memphis prosecution asked the FBI for information about him, the FBI made a "name check" and provided nasty records as it also did with me.

58. Political slurs on the wealthy Fensterwald family, including his mother and sister, are included in FBI records. The FBI characterizations of Mr. Fensterwald as "untrustworthy and unscrupulous" are not withheld. (Exhibit 4)

59. A critic of the FBI and of the Warren Commission who also criticized the FBI's work on the King assassination was photographed in sexual activity. The FBI has made extensive use of these photographs. The public press reported several years ago that the son of former Warren Commissioner Hale Boggs still has copies of those photographs given to his father by the FBI. They have been described to me by newspaper reporters and by others, including an assistant district attorney. Copies were given to the Clay Shaw defense when he was under indictment in Louisiana.

60. The FBI did not like Marina Oswald. When her husband was killed, she at first refused to see the FBI. After the Secret Service, to which she spoke freely, persuaded her to be interviewed by the FBI, she was critical of the FBI before the Warren Commission. She accused the FBI of pressuring her. The former Mrs. Oswald is remarried. She has three children. Her two girls are teenagers. What Mr. Metcalfe describes as the FBI's great concern for privacy and for not releasing what can cause harm or embarrassment is illustrated in the FBI's recent release of FBI surveillance records on Mrs. Oswald for the period just after she was widowed. It includes details of her nocturnal sexual fantasies, her confession of sleeping with her business agent

(who had been provided by the Secret Service), her explanation that she thought he had been sterilized and even her inquiry about drugs that might quench her longings and still her fantasies. This information was regarded as so urgent by the Dallas FBI it was rushed to Washington by teletype. Airmail was not fast enough. (Teletype attached as Exhibit 5) Earlier the FBI released page after page of details of Mrs. Oswald's second pregnancy. (The name of the married business agent is not withheld.)

61. This exemplification of the FBI's refusal to release records that "could lead to personal embarrassment or other personal discomfort," its genuine anxiety to avoid "serious damage" to reputations, is its practice in the King assassination as it was with regard to its surveillances on Dr. King. The assassination investigation was a Ray investigation, the FBI having decided without investigation that James Earl Ray was the lone assassin. The FBI believed that because one brother, John Larry Ray, was not saying what the FBI wanted to hear, he was not being truthful and helpful. The FBI also did not hear what it wanted from a barmaid employed in his bar by John Ray. The FBI's investigation of the killing of Dr. King extended to John Ray's bed and the sharing of it by his named barmaid. (Exhibit 6)

62. The other Ray brother, Gerald William (Jerry), was talkative and an unimaginative liar. Instead of seeking to pressure him, as it did John Ray, the FBI kept Jerry Ray under closer surveillance. It knew from his intercepted mail when Jerry was making a trip to Camden, New Jersey, to visit a woman. The FBI then made an informant of her and reported in records released to me that Jerry Ray had stayed in her room with her. It disclosed her name in some records and withheld it in other records along with the always withheld name of another woman. In this instance, the FBI disclosed the name of an informant while violating her privacy in sexual matters. It disclosed even her receipt of money from Jerry Ray - $40.00.

63. Jerry had a brief marriage. He also had another brief relationship from which there issued an illegitimate son. Details of both are released and available in the FBI's reading room. The name of the former wife, the identification of her family and personal details of a private nature relating to her are not withheld under the privacy claim. From the released records it would not be difficult to locate the illegitimate son, his mother and his grandparents.

64. The FBI's concern for the privacy of Dr. King's family is well known. In 1971 I published a collection of what was in the public domain in a context I hoped would bring these leaks to an end. Ever diligent to prevent "serious harm," as is now well known, the FBI pieced together assorted tapes and mailed them to

Mrs. King. This was part of an FBI effort to induce Dr. King to kill himself. Among the records released to me are details of an urgent investigation ordered by FBIHQ. This "national security" inquest followed Mr. Hoover's receipt of a letter from Walter Winchell together with a letter Mr. Winchell received from one of his "fans," a cabdriver. The cabbie had driven Dr. King and several of his associates to the New York airport. A white woman who accompanied them kissed Dr. King as he left the cab. The cabbie did not regard this as a "goodbye" kiss. Therefore, Director Hoover didn't, either. He ordered an immediate "national security" investigation to learn the woman's name. The name and address of the cabdriver were not withheld.

65. The Department argues that Mr. Lesar's "reliance" on the Attorney General's Memorandum on FOIA is "misplaced: because "the particular portion quoted ... applies only to those situations in which an agency harbors 'substantial uncertainty' as to whether the privacy invasion is warranted." In this instant cause reflection of "substantial uncertainty" is manifest in records relating to the spurious basis for the FBI's contrived "national security" investigation of Dr. King. First the FBI invented a "communist" influence on him and his Southern Christian Leadership Conference (SCLC) through Stanley Levison and Hunter Pitts O'Dell. (The second name appears in other formulations.) Long after the most diligent investigation, complete with extensive electronic surveillances, failed to yield any confirmation of the contrivance improvised for the indulgence of the Director's paranoidal views, this spurious pretense was clung to. The only visible "substantial uncertainty" appears to relate to the release of the Levison and O'Dell names. In some records they are released, in others they remain withheld. Some of this withholding - of the public domain - is attributed to a (b)(1) claim. There is no recent biography of Dr. King of which I knew in which these names do not appear. Stanley Levison was so prominent a personality in the NBC-TV "docudrama" titled "King" it led to considerable public protest from some of Dr. King's former associates and other prominent blacks.

66. The FBI's continuing anxiety not to risk "serious damage" to Mrs. King and its intent not to intrude into her privacy are reflected in the release to Mr. Lesar in abbreviated form of what was released to me in full, a high-level internal FBI record accusing her and Dr. Ralph Abernathy of keeping "conspiracy" rumors alive in order to commercialize the assassination of her husband. This record (attached as Exhibit 7) is defamatory. It is at best an interpretation of what was

overheard on prohibited electronic surveillance. The record of the Church committee discloses that a year before this wiretapping of Mrs. King, Dr. Abernathy or both, the Attorney General denied tapping permission. This tap, in fact, was a year after Dr. King was assassinated.

67. This FBI interpretation of a "rank trick to keep the money coming in to Mrs. King" represents a different kind of privacy concern, privacy for the FBI. The scheme to publicize the intrusion into Mrs. King's privacy concludes, "We can do this without any attribution to the FBI and without anyone knowing that the information came from a wire tap."

68. Often enough there is the ludicrous in privacy claims. One example is the withholding of the name of the public-relations director of Look magazine. (Exhibit 8) Public relations is, of course, a public function, a role requiring contact with the press. In this case the name is that of Leonard Rubin, who when I last heard could be found at Playboy.

69. Other records not withheld include allegations of homosexuality, impotence, various kinds of medical records, records of emotional illness and hospitalization for it, even of the contracting of venereal disease, all without removal of names. After the assassination there was particular FBI interest in the reported psychiatric record of one of Dr. King's closer associates. The FBI investigated his mental health after that preacher espoused other than the FBI's explanation of the crime. His name is not withheld.

70. What may be the reductio ad absurdum in this instant cause is on consecutive pages of the OPR's notes on the FBIHQ MURKIN files, pages 98-101. (Attached as Exhibit 9) Names withheld on one page are not withheld on other pages.

Even if

71. Were it not for what the foregoing paragraphs represent about FBI, OPR and other Departmental uses of the privacy exemption, any inference that in seeking disclosure of some of what is withheld either Mr. Lesar or I intends to violate the privacy of Dr. King's survivors is baseless. There is precious little privacy that has survived the FBI. FBI and OPR practice with respect to privacy issues is at best whimsical and inconsistent and is always without consideration of what is in the public domain. The record is one of misuse of the exemption, of not meeting its requirements with regard to those whom the FBI does not like and claiming the exemption to withhold what is not subject to withholding. In my experience proper considerations of privacy get lost in the actualities of Departmental practice.

72. There sometimes is a perfectly proper and necessary need for secrecy

with regard to the actual identification of informants and of sources who are not full-fledged informants. Actual practice is not as represented by the Department. The apparent purpose of miseepresentation is to extend the exemption in an effort to hide transgressions in this instant cause and, if there is precedent, in other cases. To accomplish this, Department counsel state what is not fact and what is not supported with regard to disclosure of actual identification of informants. There is no question of identification of informants in this case and there is no danger of its happening. What is or can be involved in disclosuee of symbol identification also is misrepresented. Symbol identification is a filing designation and in some instances a means of hiding actual identification when that is necessary. The symbols also indicate the natuee of the informant's actieity, as in criminal, security or racial matters. The field office is included, as is a number.

73. It simply is not true that the FBI never discloses the actual name of an informant. It also is not true that disclosure of the symbol makes correlation with the name possible, the Department's representation in this instant cause.

74. In particular it is untrue to allege ahdt any use by any requester of the symbol without a name is "hypothetical." I do not recall any such allegation by any FBI agent. I am certain that all FBI agents know better than to state what Mr. Metcalfe states in this regard.

75. I illustrate with the case of an agent informant whose aame and symbol both were disclosed to me and to others by the FBI. There is no value to me in the name and I have no special interest in the name, which is Morris Davis. His symbol is BH 1079-PCI. I can read any one report of information attributed to BH 1079-PCI relating to the King assassination and know immediately not to trust anything BH 1079-PCI told the FBI. Having read moee than one report, I can state unequivocally that I can pinpoint the public domain and bad street information sources of all the baloney he sliced for the FBI. Birmingham FBI agents initially might have no way way of knowing this but FBIHQ and a subject expett would have no doubt at all. BH 1079-PCI's "Liberto" story, for example, comes from the work of the late Bill Sartor, whose name the FBI persists in withholding on the claim to the privacy exemption. Bill Sartor, some of whose original notes and manuscripts I have, was a "stringer" for Time magazine in Memphis on the King assassination. I quoted one of his relevant articles in my book FRAME-UP. BH 1079-PCI's "Prosch" story is embellished from news stories. By the time BH 1079-PCI started giving the FBI bad information, anyone familiar with the subject would know what he took straight from others and

what he embellished. This is not "hypothetical." It does illustrate the importance of the symbols to subject experts as a means of evaluating the original information and the use, if any, made by the Department and the FBI.

76. This is especially relevant with theeOPR and its report because the report draws heavily on the most undependable FBI sources.

77. Attached as Exhibit 10 are some of the FBI records relating to Morris Davis. These files reflect ulterior, political purposes in turning Morris Davis or BH 1079-PCI over to the House Select Committee on Assassinations. The FBI did it knowing that Davis's information on the King assassination was totally undependable and wrong. These documents do not reflect it but everything Davis said had been investigated and disproved earlier by the FBI. This is how FBIHQ knew it was passing bad information and a conspicuously bad source over to the House committee.

78. In turning BH 1079-PCI over to this committee the FBI was well awaee of what to expect: utter irresponsibility by the committee; and, if there is truth to the claim that harm befalls exposed informants, the certainty that Morris Davis would be subject to harm. In fact, Davis complained to the FBI about a number of matters, ranging from the conspicuously unprofessional public donduct of the House investigator, which could have endangered Davis, to being turned over to Mark Lane by the committee. At that particular moment Lane was engaged in extensive public appearances to promote a dubious book. Lane holds the FBI responsible for the King assassination in a plot that extended to Director Hoover - wild and false but merchantable allegations.

79. Theee can be little doubt to those professional investigators, the FBI, that this committee is engaged in dredging the most stagnant swamps of assassination mythology. In turning the Davis and other records of that kind over to the committee, the FBI was misdirecting the committee. This serves to turn the committee away from investigating the FBI. (Under its present chief counsel there appears to be a high probability that the exploring of fictional reports of which those by Davis are characteristic will be the committee's substitute for a real investigation. Having proven what was not worth a second thought is baseless, the committee will then be able to declare, in the J. Edgar Hoover tradition, that it "left no stone unturned.")

80. One of this series of records turned over to the House committee relates to J. B. Stoner (see Paragraph 55 above). The two different copies of the one teletype were both provided to me by the FBI.

81. Under date of November 8, 1977, I wrote the FBI specifying what was in the public domain that it was withholding in this series of files. I have not had

acknowledgment and of course no replacement copies.

82. In Paragraph 76 I state that the OPR made use of some of the FBI's most irresponsible sources. The OPR also assumed James Earl Ray's guilt. OPR was hard pressed to find a credible motive so it drew upon pathological liars like Raymond Curtis. From such materials the OPR theorized Ray motives of racism and expected financial reward from southern business interests. None of this information was sound. When the FBI checked out a report of a $100,000 bounty on Dr. King, the untruth had more substance than existed in most such reports. This one came from a misunderstanding. (Exhibit 11 is a relevant page from FBIHQ file 44-38861-5154.) In virtually all other instances the fabrication was total. But these allegations are presented seriously in the OPR report. It gives Ray the dual motive of racism and financial reward. It gives no names for any sources, however, not even those that are in the public domain, like that of Raymond Curtis.

83. Curtis is a publicly known FBI source, although it continues to withhold his name in some records. Davis is a publicly known informant. Despite this the FBI refuses to replace copies of records from which his name, too, is withheld. There is importance in not withholding what it is not necessary to withhold. Unnecessary withholdings can lead to harm to the innocent from misunderstandings. In a case the Attorney General has designated as historic, all possible information should be available. Accuracy of the available information is important, as is independent means of making evaluations of official statements and conclusions.

84. The Davis case shows it is not true that the FBI never discloses the identity of an informant. However, disclosing the name is not the present issue. Disclosure of the name, which <u>is</u> an identification whereas the symbol is <u>not</u>, shows that any representation of the certainty of harm to an informant from disclosure is not true. Most informants are not Valachis.

85. No harm has come from disclosure of the Davis symbol with his name. The disclosure of symbols, not names, is the issue. They are symbols, not "codes," as the Department represents, using "codes" in the sense that codes can be broken. Nothing like that is possible because the symbols are arbitrary, not coded. Despite this, the Department states that "public disclosure and analysis" of these symbols "could ultimately lead to their complete ineffectiveness" and "significantly harm specific governmental interests."

86. I have prior experience with this argument. It was made in my C.A. 2301-70 in an affidavit by since-retired FBI SA Marion Williams. In that case my

request was for final reports of certain nonsecret laboratory testing of materials in the investigation of the assassination of President Kennedy. SA Williams stated that my request for final reports was a request for "raw materials." He then stated if this laboratory information were given to me that, too, would lead to the destruction of the FBI's informant system. That affidavit was the basis on which the Department prevailed in C.A. 2301-70. That case was instrumental in the 1974 amending of the investigatory file exemption. When I refiled that suit as C.A. 75-226, the FBI immediately and voluntarily provided me with the identical "raw material" the disclosure of which it had alleged would lead to the destruction of its informant system. Its informant system has survived these three years. Now disclosure of a filing designation that is not "coded" to any name is held forth as the newest hazard to this informant system.

87. The Davis case is not a unique case of FBI disclosure of informant identification. On an even larger scale it has disclosed the identification of sources.

88. The FBI voluntarily disclosed that one Carlos Quiroga of New Orleans was an informer and that his associate, Carlos Bringuier, was a source, whether or not an informer. These two men are anti-Castro Cubans whose involvement with Lee Harvey Oswald resulted in Oswald's receiving much attention as pro-Castro and "red." The FBI also disclosed Mr. Bringuier's source - known to me to have been an informant for the local police at that time. (The CIA has also disclosed that Mr. Bringuier provided it with information.)

89. On the other hand, in the King case the FBI withholds the fact that the deceased William Somersett was its informant by withholding his name from records it has released to me in C.A. 75-1996. When I informed the FBI that Somersett was known as an FBI informer and was also dead, the FBI nonetheless refused to replace the copies of records from which there was this unjustifiable withholding. With Mr. Somersett, who had been cut loose by the FBI because his information was so undependable, there was no possibility of harm befalling him after he was dead. To the best of my knowledge, Mr. Davis, Mr. Quiroga and Mr. Bringuier are alive. Yet I have not heard that any harm has befallen any one of them because the FBI has made public their associations with the FBI.

90. The FBI has also disclosed to me the name of one of its sources who gave it information about me. No harm befell this person, unless he was harmed by my sending him copies of what had been provided to me and telling him how I obtained it.

91. I have copies of many thousands of pages of FBI records that have always been readily available at the National Archives. I have not seen a single one of these records that was made available on the orders of Director Hoover that eliminated the name of a single source or any one that withheld the symbol of an informant. It was not until after the enactment of FOIA, much more after the 1974 amendments became effective, that I began to receive FBI records with these kinds of withholdings.

92. Until after the Act was amended I do not recall the withholding of a single FBI name. Then it became general practice. I also do not know of a single report of any harm befalling any of the many hundreds of FBI agents whose names were not withheld.

93. Another form of source withholding in this instant cause is misrepresented by the Department in affidavits and by counsel. What is sought is the withholding of what can provide independent assessment of the OPR report and the disclosure of evidence that can tend to undermine, if not in fact disprove, the official explanation of the King assassination. This particular source is police reports, from Atlanta and from Memphis. In neither case is there any Departmental evidence showing that the content of the reports is not public domain. In fact, some of the content of what is withheld together with some of the actual pages of what is withheld was disclosed to me by the FBI in C.A. 75-1996. There is little likelihood that any substantial information in the Memphis police reports is not public knowledge, largely because it was made public by Memphis authorities.

94. From extensive prior experience with FBI avoidance of first-person affidavits and from prior personal experience with SA Horace P. Beckwith in FOIA matters, my attention was immediately attracted to his providing of an affidavit attesting to a search in this instant cause that he did not make. In the past it has been my consistent experience withtthe FBI that one of its means of withholding what might otherwise not be withheld is by the tactic of having an agent without personal knowledge execute the affidavit attesting to the search. My prior experience in all cases is that careful checking of nonfirst-person affidavits shows they represent what would be false swearing if executed by one of firsthand knowledge.

95. My attention to SA Beckwith's affidavit was further attracted by typical FBI semantics commonly used to provide a cover for secondhand and dubious statements to justify withholding under (b)(7)(D). In SA Beckwith's affidavit one formulation is, "I _specifically_ requested a review of the material furnished the

FBI by the Atlanta, Georgia, Police Department. I was informed that 29 pages were received ... These documents are included in the FBI file on the assassination of Dr. King and are specifically located in Atlanta file number 44-2336, Serial 1215." (Paragraph 2, emphasis added) Mr. Beckwith does not state that he knows what "material" was "furnished" by the Atlanta police department. If he was "informed that 29 pages were received," he does not state that no more than 29 pages were furnished.

97. My attention was further attracted to these formulations because, as SA Beckwith should have known, these records should also be "specifically located" in my own files as a result of C.A. 75-1996 and under stipulations sought by the FBI in that case. These stipulations required that I be provided with copies of all nonexempt FBI Atlanta field office MURKIN records not already provided from FBIHQ files. SA Beckwith provided a nonfirst-person affidavit regarding compliance with these stipulations.

98. Still without claim to first-person knowledge, SA Beckwith states, "I was informed" that "the police department transmitted these documents to the FBI in confidence for investigative assistance during the investigation of Dr. King's assassination." (Paragraph 2)

99. The language of footnote 17 (Memorandum, page 12, citing footnote 21 of the Motion, page 17), together with the avoidance of any description of the content of these 29 pages, led me to make the careful check that was possible in this case. While I do not have most of the records withheld from Mr. Lesar in this instant cause, what SA Beckwith refers to clearly is required to have been provided to me in C.A. 75-1996.

100. My first discovery is that "the" King assassination file in Atlanta is not 44-2336. It is 44-2386. While this might be attributed to human error, SA Beckwith's other misstatements aee not easily explained as human error.

101. Serial 1215 is in Volume 9 of the Atlanta FBI records. The FOIA processing worksheets for Serial 1215 and a check of the Serial itself, both provided to me in C.A. 75-1996, do not reflect that this Serial is of the 29 pages, although it is. Tbese worksheets also represent that no part of Serial 1215 was withheld from me.

102. It also is apparent to me from checking my own files that SA Beckwith could have provided a different and a first-person affidavit relating to the Atlanta police department records from his own personal knowledge of FOIA procedures of the

FBI and from his personal involvement in C.A. 75-1996. All field office records provided to me in C.A. 75-1996 were sent to FBIHQ where they were processed. FBIHQ has copies of what it processed for me. The records I cite in the immediately following paragraphs are all records that exist within SA Beckwith's FOIA unit. They are not only as he and the Motion and the Memorandum represent, in the Atlanta Field Office.

103. "Not Recorded" Atlanta Serial of which two copies were sent to FBIHQ is particularly relevant. The copy attached as Exhibit 12 was provided to me under the stipulations in C.A. 75-1996. This August 4, 1976, "Airtel" from the SAC, Atlanta, to FBIHQ reports the providing of copies of all volumes of its MURKIN file only, "namely Atlanta 44-2386," to members of the OPR task force. It enclosed "five copies of an LHM plus one xerox of 29 pages of material" from the Atlanta police. "During this review," the Atlanta SAC reported, "Task Force Member James Walker ... requested a Xerox copy of two serials in this file, namely 44-2386-1214 and 1215, which consisted of 29 pages of material ... relative to people who in the past had threatened the life of MARTIN LUTHER KING. A Xerox copy of this material was furnished to Mr. WALKER." (Other records relevant to the King assassination are not included in MURKIN.)

104. The Letterhead Memorandum attached to this "Airtel" reflects only a limited Task Force inquiry in Atlanta. It does not reflect a serious effort by the Task Force to meet the obligations seemingly imposed upon it by the Attorney General. This can provide motive for some of the withholdings in this instant cause. Atlanta was one of the areas of most active investigation in the King assassination because of the presence of James Earl Ray in that city and because he abandoned an automobile there. Atlanta also is the city in which Dr. King lived and where his office and church were located.

105. The 29 pages are of two Serials, not the single Serial represented by SA Beckwith.

106. The worksheets are a list of the records provided together with all claims to any exemptions. The relevant worksheet page is attached as Exhibit 13. It shows that each of these Serials, as provided to me, is of but a single page and that each of the Serials was provided to me without any withholding. The obliterated entry under "Exemptions used" after Serial 1215 may indicate that at one point a claim to exemption had been made. This is borne out by markings I see on Serial 1215. These markings indicate that prior to review all the names, together with all the

information following them, were obliterated. Serial 1215, as provided to me rather than as described by SA Beckwith, is attached as Exhibit 14. Serial 1214 as provided to me and as described in the worksheet is attached as Exhibit 15. Serial 1212 (attached as Exhibit 16) establishes the origin of Serial 1215 and provides identification of the person who signed it. (The worksheets do not account for Serial 1213. It was not provided to me.)

107. Whatever explains the factual inaccuracy in SA Beckwith's affidavit it is beyond question that:

> 29 pages of Atlanta police records are involved; the OPR had copies of these records as well as of any notes Mr. Walker may have made; after searches in both Atlanta and FBIHQ, although several sets of duplicate copies of these 29 pages are in the FBI's files at both places, not 29 but 2 pages only were provided to me; and the FBI, despite the stipulations and its assurances to the court in C.A. 75-1996, withheld 27 of these 29 pages and then provided a worksheet falsely representing that between them Serials 1214 and 1215 total only two pages rather than 29.

108. These facts raise substantial questions of FBI honesty and of FBI intentions relating to compliance and noncompliance.

109. Serials 1214 and 1215 as provided to me are information furnished by the Atlanta police. Serial 1212 establishes the identification of the police sergeant who signed Serial 1215. This is precisely the information represented in the Memorandum and the attached affidavits as requiring withholding from Mr. Lesar, yet it was not withheld from me. Mr. Metcalfe's representations (at page 14) are:

> "... release of this information would seriously inhibit the FBI's relationship with its confidential sources and with other law enforcement personnel." (Emphasis in original)
> "Accordingly, defendant respectfully urges that the Court should allow defendant to preserve the confidentiality of these local law enforcement records.[17]" (Emphasis added)

110. If Mr. Metcalfe was led into these representations to this Court by his trust in what he was told by the FBI, they nonetheless are representations the falsity of which was known to the FBI when it misled Mr. Metcalfe, if it misled him.

111. The plain and simple truth is that this is not the only case in which the FBI has provided me with information from local police. It knows better than its representations on this matter. The Depart ment also knows better because the Department was involved in the release of other such records from other local police. These ~~only~~ other local police records relate to the King assassination, to the assassination of President Kennedy and to ancillary investigations in both cases. The FBI reading room, the National Archives and the Library of Congress all make publicly available records provided by local police.

112. Specifically with regard to Serial 1215 and generally with regard to

similar records of local police, the "confidentiality" alleged by the Department does not exist. SA Beckwith's representation (at page 2), "provided in confidence with the clear understanding that the FBI would insure their confidentiality," is not a truthful representation. Both quotations represent what within my FOIA experience is a new effort to withhold what under the 1974 amendments to the Act should not be withheld. This is not to state that there never is any such confidentiality. It is to state that in this particular instance and many others like it there is not and there never was the confidentiality represented to this Court.

113. Mr. Metcalfe and SA Beckwith both were involved in my C.A. 75-1996, together with a number of other FBI agents and Civil Division lawyers. In C.A. 75-1996 I was provided with hundreds of pages of local police reports. I waa also provided with many pages of records from other local authorities, like prisons, depart ments of corrections and sheriffs. The FBI's stipulations in C.A. 75-1996 provided for giving me hundreds of pages of Memphis Police Department records.

114. Examination of Serial 1215 as provided to me also bears heavily on the fidelity of representations made to this Court in this instant cause on privacy. All those whose names are provided are alleged to have threatened Dr. King. This is also true of many other pages of FBI records provided to me.

115. The May 10, 1978, affidavit of James F. Walker makes no reference to these Atlanta Police Department records. Exhibit 12 identifies Mr. Walker as the member of the OPR staff who obtained copies of those records from the FBI Atlanta Field Office.

116. Although my suit for King assassination records was filed before the OPR reinvestigation was established and prior to the August 4, 1976, "airtel" by the Atlanta SAC (Exhibit 12), neither the Walker affidavit nor the "airtel" forwarding these 29 pages to FBIHQ alleges any restrictions on them or any confidentiality attaching to them.

117. Mr. Walker does repeat the self-serving statements of the affidavit of Mr. Stanton with regard to the Memphis police department records.

118. Mr. Walker's representation of the OPR's mission (in Paragraph 1) is "... review of Department of Justice and Federal Bureau of Investigation files relative to Dr. King." A "review" of "files relative to Dr. King" is not the announced purpose of the OPR's review. This phrasing omits half of the OPR's task and understates the other half to avoid the inherent and explicit criticisms of the

FBI. The announced purposes were to examine into the FBI's work in the King assassination investigation and into the FBI's campaign against Dr. King. That Mr. Walker should know better than this representation and fails to state the certainty that the OPR report would be critical of the FBI is disclosed in Exhibit 17, two FBIHQ records provided to me in C.A. 75-1996. An FBI note added to the second states that "... Robert Murphy ... has stated his summary will also take cognizance of the FBI's actions to discredit Dr. King." This also is reflected in the Department's press release on the OPR report. (Attached as Exhibit 18)

(119. This press release establishes that the second possible claim of applicability of FOIA exemptions does not exist because there was no basis for the "security investigation" after 1963 - if there ever was. In earlier paragraphs I state I recall no claim to any law enforcement purpose in any of the Department's affidavits.)

120. Bearing on the dependability, informativeness and forthrightness of Mr. Walker's affidavit and I believe on Departmental intent to withhold and cover up is this language under "SYNOPSIS" of the second document in Exhibit 17: "... Robert Murphy ... [I]ndicated he had recently reviewed the Senate Intelligence Committee draft report ..." On the second page the FBI concludes that "it appears knowledge of the Senate Intelligence Committee's report dictated additional review pertaining to our actions to discredit and neutralize King." The OPR report is pretty much limited to what it knew the Senate report states.

121. In Paragraph 2 of Mr. Walker's affidavit there is reference to "copies of the relevant Memphis Police Department (MPD) records." There is no further description. Ambiguity is added by language indicating but not specifically stating that the MPD records in the prosecutor's office are only copies. In addition, what is "relevant" in the MPD records is limited to "files relative to Dr. King."

122. The same ambiguous language is used in Paragraph 3, "relevant documents" and no more. Paragraph 4 adds no further description. Slightly more is in the fifth and final paragraph which refers to a subpoena for "MPD records relevant to Dr. King's assassination." The subpoena is Attachment A.

123. Examination of the subpoena discloses no mention of the King assassination. Rather does it request "documents relating to the James Earl Ray case." This reflects a predetermination of guilt rather than the investigation supposedly ordered by the Attorney General. There is more to King assassination investigation than "the James Earl Ray case." Moreover, the subpoena holds no

reference to the other part of the OPR's mandate relating to the FBI's "Cointelpro"-type acts against Dr. King. I have copies of MPD records that are relevant to the OPR's mandate and are not included in the subpeaaa. I have personal knowledge of other of Mr. Stanton's files that are relevant to the OPR's mandate. Mr. Walker does not include these and still other relevant Shelby County records in his subpoena.

124. The subpoena is so vague and so general that some of it is without meaning to even a subject expert. There is not a single date in it. Some items, however, indicate that the MPD is not the exclusive source, as Mr. Walker's affidavit states it is. An example is the undated item "$. James Earl Ray Supplements, Attorney General's copy, pages 1586 to 1772." (emphasis added) If this relates to the State Attorney General, the absence of date makes it impossible to determine whether pages 1586 to 1772 relate to the evidentiary hearing of October 1974. If this is the case, then other issues entirely are raised. From personal knowledge I state that the evidentiary hearing produced the most serious and entirely undisputed evidence relating to the FBI's investigation -of the King assassination as well as of "the James Earl Ray case." I have read the OPR report and found no such references in it.)

125. I have read the list of records in the subpoena. It is an inaccurate and incomplete itemization. It lists information that is not secret and is within the public domain.

126. With regard to witnesses' statements, as best it can be determined from the vagueness of the descriptions, at least some aee public domain. Item 1 is "statements - State v. James Earl Ray pages 1400 to 1523." Information of this general description, as obtained from the Memphis police and as duplicated by the FBI's interviews, was provided to me in C.A. 75-1996. Information of this general description, often attributed to statements provided by the police, received extensive publicity shortly after Dr. King was killed. There was so much publicity of this nature that the judge issued gag orders and charged a number of persons with contempt. Also extensively public knowledge are Items 5.a., 5.b., 5.d., 6.a., 6.c., 7/b. and 7.c.

127. Three items relate to a fake citizens' band radio transmission. The FBI has given me copies of Memphis police department records of this investigation.

128. Item 5.d. is in error in representing there was not a single "detail with Dr. Martin Luther King, Jr., April 3, 1968." From the records provided by the

FBI in C.A. 75-1996 there were not fewer than three details with Dr. King, two for protection and one for spying on him and those in contact with him. Each of the protective details was headed by a named inspector of the MPD. The third, the spying detail, was composed of two black members of the MPD intelligence unit. Relevant MPD records were provided to me by the FBI in CAA. 75-1996. (All three details plus an FBI detail were present in the church the night of April 3, when Dr. King made his famous "Mountaintop" speech.) The subpoena does not appear to include MPD records relating to the spying detail but information on it is included in the OPR report, apparently in answer to the false charges against the FBI made by Mark Lane. He charged the FBI with complicity in the assassination over the withdrawal of one of the black intelligence unit detectives against whose life a number of threats of which I know had been made. I believe it would be unusual under these circumstances if the OPR did not seek copies of the MPD's reports, particularly because the text of the OPR report indicates it did not draw on the relevant FBI files made available to me in C.A. 75-1996.

129. With regard to Item 7.c., "return of mustang [sic] to Memphis," there never was any secrecy or any need for secrecy. But if there had been, aside from what was disclosed to me in C.A. 75-1996, Mr. Stanton's office assured there would be no secrecy. Mr. Stanton's office ridiculed the House Select Committee on Assassinations when it sent two investigators to inquire into green stamps reportedly left in the Mustang. This was a ludicrous exploit. The committee should have known of the FBI's thorough search of the car after it was located in Atlanta. The green stamps in question were public property because they were given when gasoline was purchased by the MPD officers who drove the car to Memphis from Atlanta.

130. With regard to the other items, the subpoena's descriptions make it impossible to state whether or not the information is public. Based on my knowledge of this case, the investigation and the disclosures of information, including at the guilty-plea hearing and at the evidentiary hearing, I believe it is not likely that any information was not made public with the possible exception of what contradicted the official position on the assassination.

131. All Departmental representations relating to withholding of MPD records are undermined by this language on page 18 of the Motion, "The confidentiality, of course, centered around the <u>contents</u> of the documents ..." (Emphasis in Motion) There is no FBI or OPR affidavit attesting that <u>any</u> of the <u>contents</u> is confidential. On the "content" basis I believe nothing is confidential. On the "content" basis,

I believe this information is included in the many thousands of pages provided to me by the FBI in C.A. 75-1996, in the many court proceedings and as a result of Memphis and FBIHQ leaking to the press.

132. Mr. Stanton's affidavit, like that of Mr. Walker, has similar defects. Mr. Stanton also does not state that any of the documents or their contents are not in the public domain. He implies this in a number of ways but does not state it. That it is not true is indicated in my affidavit of May 22, 1978, beginning with Paragraph 31 and in this affidavit beginning with Paragraph 125.

133. Never once having made reference to the content of the documents, the content being what is most important, according to the Department, Mr. Stanton states, "Had there been no concern over the confidentiality of these documents I would not have requested a court subpoena." Other explanation of the demand for a subpoena is available. The fact is that prior to the subpoena Mr. Stanton did give access to those files to the OPR task force, as the Walker affidavit states.

134. Mr. Stanton's prior involvement in the Ray case, of which he makes no mention, is another possible motive for Mr. Stanton's demand for a subpoena. In addition to what I state about this in my prior affidavit, I state that when Mr. Stanton was his father's assistant as public defender, they negotiated a "compromise" of 99 years. That was the maximum sentence then possible because there had been no executions for years. The trial judge himself stated this at the end of the guilty-plea hearing. (The trial judge also described it as a good deal for Memphis because Ray could have been acquitted and instead he received the maximum possible sentence.) Negotiations for a deal were begun by the public defender within a half-hour of being made co-counsel. Prior counsel and Ray both had rejected an earlier offer of a 20-year sentence. Because of the nature and terms of this deal when Mr. Stanton was Ray's counsel, now that Mr. Stanton is District Attorney General and can attempt to control access to the records, he has motive for not wanting copies to be available to those who do not agree with him on the crime and on this "compromise."

135. Mr. Stanton errs in stating that the files in question "were made available" at the 1974 evidentiary hearing. He personally refused to comply with the court's order. When on an informal basis rather than by a citation for contempt the judge persuaded Mr. Stanton to make a few gestures, a few records were produced later. I then examined all of those records. I recall nothing at all like the description of these police reports, certainly nothing of their volume.

136. In making copies available to the House Select Committee on Assassinations

for it to use selectively, to leak or interpret or misinterpret, Mr. Stanton did not, from his affidavit, provide any restrictions. He does not state, for example, that any member of the staff of that committee is prohibited from making copies and using them at a later date.

137. Mr. Stanton's claim that his predecessor maintained these files in confidence is not mere self-service - it is ridiculous. The content of those files was made available to those expected to write as Mr. Stanton's predecessor desired. Some was in the newspapers.

138. Mr. Stanton states, "I note in these documents that names of private citizens appear within these documents. I feel it would be betraying their trust and confidence ... if I did not object to their names being made public ..." Several hundred of those citizens were subpoenaed by Mr. Stanton's present office. That did make their names public. This led to those same citizens being publicized extensively all around the world.

139. Substantially if not all the MPD information was given to the FBI, which has provided me with copies of the FBI's versions and some copies of MPD repords. Copies are also on deposit in the FBI reading room. Beginning the night of the assassination the Memphis Field Office began a series of daily teletyped reports, leter considerably amplified, including information provided by the Memphis police.

140. It is not possible that Mr. Stanton does not know that at least some of the information in those files is public, as I state above beginning with Paragraph 125.

141. It also is not possible that Mr. Stanton does not know that limited and late as it was the investigation by the public defender's office cast substantial doubt on the case in the MPD files against Mr. Ray. I have read the reports of the public defender's office. Mr. Lesar and I obtained them under court order in 1974.

142. I have read both of the affidavits by FBI SA Lewis L. Small. He states he is an expert on classification. He does not claim to be a subject expert, even to have read a single news account on this subject. He does not state that any of the information he believes is classified properly under Executive Order 11652 is not in fact part of the public domain.

143. In none of the affidavits is there the claim that the relevant records were classified when they were generated. SA Small's affidavits do not address this directly but they leave without question that none of the records he reviewed was classified prior to January 17, 1977.

144. January 17, 1977, is six days after the first leak of the OPR report on Capitol Hill. Classification of January 17, 1977, was limited to Appendix A materials. All other classifications, by far the majority of them, were subsequent to Mr. Lesar's request. These classifications continued into 1978. Most of the classifications also were subsequent to the public release of the OPR report.

145. Apparently in seeking to explain away failure to classify these records as they were generated the Memorandum represents (page 6) that

> "It should be noted that the classification resources of the FBI were not as readily at hand when these second-generation documents were generated."

While I do not recall any such provision of Executive Order 11652, I do recall that in C.A. 75-1996 I received records stating that the OPR review of the FBI's records was in special accommodations inside the FBI building, not inside the Justice Department building. The OPR records thus were more "readily at hand" for the "classification resources of the FBI" - if the Department was without any classification resources.

145. I have had extensive experience with claims to "national security" as recently as last month.

147. Over the years I have obtained hundreds of pages that had been withheld under "national security" classification. In no single instance have I found a single word that was properly subject to classification although "Top Secret" classification was common. It is not uncommon for "Top Secret" stamps to be used for unsanctioned purposes, even by those who lack classification authority. All the published transcripts of Warren Commission testimony were classified "Top Secret" until the Government Printing Office refused to set type on classified material. Court reporters use "Top Secret" stamps to prevent chaos in their offices. Just last month the FBI "declassified" for me a record that was never classified at all and another that was not classified until long after it was released to me and I had published it.

148. On May 23, 1978, I received from FBI FOIAPA Chief Allen McCreight two records relating to a Russian defector, Yuri Ivanovich Nosenko. The letter and the first pages of both records are attached as Exhibit 19. Mr. McCreight says this about these two FBI documents identified as Warren Commission Documents Nos. 451 and 651 (CD 451, CD 651), "The last review was in December, 1975" when they "were determined by the FBI to no longer warrant classification and were made available to the general public." This representation is not factual.

149. Mr. McCreight apologized because "These documents were not included among the approximately 98,000 pages of John F. Kennedy Assassination material released in December, 1977, and January, 1978. ... Our worksheets pertaining to the Kennedy Assassination material, in connection with the FOIA release, show the documents were withheld on the basis of ... (b)(1). This is in error and the claim for withholding the documents on this basis is hereby withdrawn." Nothing in this quotation is faithful and factual aave for the confession of unjustified withholding.

150. I publsshed the content of these two FBI records prior to the time Mr. McCreight states they were first "declassified." I broke into no secret files to do this. I obtained them and other relevant FBI pages from the National Archives in response to my request of early 1975. While these Archives records had been withheld and were stamped as declassified in March 1975, they had not been classifeed, as the first two pages, attached as Exhibit 20, show. This is to say that after almost a decade of withholding, the Archives declassified what was not classified - and that this was nine months prior to the time of first FBI declassification Mr. McCreight reports.

151. Despite what he wrote me, the copy of CD 651 provided by Mr. McCreight was never classified by the FBI. It not only bears no classification stamp, it bears none of the markings for declassification required by Executive Order 11652.

152. The copy of CD 451 provided by Mr. McCreight was classified - more than two years after it was "declassified" by the National Archives.

153. When FBI authority "2040" classified CD 451 on July 13, 1977, he also held it to be "Exempt from GDS Category 2,3." FBI's "4913" declassified this record on May 8, 1978, apparently on the basis of my request for something entirely different.

154. In some unexplained manner this record had had a "secret" stamp applied although the xerox I obtained from the National Archives has no such stamp.

155. Only the first page of CD 451 sent by Mr. McCreight bears any classification or declassification stamp.

156. Mr. McCreight and his staff have not yet gotten around to declassifying the other relevant pages I obtained from the National Archives in May 1975. I reported them, too, in my book POST MORTEM, which went to the printer in mid-October 1975.

157. Mr. McCreight also "advised" 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" me.

158. This actual request was for copies of Nosenko records made available to Edward Jay Epstein by the FBI after they had been withheld from me under my prior 1975 requests. The CIA and the National Archives refused to comply with my similar requests of both although my first requests of both agensies are of several years ggo.

159. In a book titled Legend: The Secret World of Lee Harvey Oswald, and in extensive promotional appearances, articles and interviews Mr. Epstein represents that he obtained his "information" from these three agencies under FOIA.

160. In Legend Mr. Epstein actually exposed an important FBI "national security" informant known as "Fedora," described as "a Russian working under diplomatic cover" at the UN.

161. From first to this last my experience with "national security" claims is that they are bogus claims. This is not to say that there neither is nor can be legitimate claims of this nature relating to assassinations and assassination-related records. Rather is it to state that I have not seen a single record withheld under national security claim that justified the claim.

162. This is but the most recent of the FBI's rewriting of my requests. This also is what the Department seeks to do in the Motion and the Memorandum. At the beginning of each and in a number of references the key word in Mr. Lesar's request is omitted. As first expressed on page 1 of the Memorandum, his request is "for access to certain records pertaining to the assassination" of Dr. King. In Footnote 1 of the Memorandum, it is "sought information concerning the assassination investigation only." At the beginning of the Motion, it is "records ... which pertain to the investigation of the assassination of" Dr. King. [Emphasis added]

163. One always-omitted word alters the meaning given to Mr. Lesar's request. The word is "review." His request does not duplicate mine in C.A. 75-1996. It is for the records of the recent Department reviews described in foregoing paragraphs and exhibits. Although omitted by the Department, "review" appears in each of the Items of Mr. Lesar's request.

164. Consistent with my prior experience with the Department is its laying claim to exemptions requiring a law enforcement purpose or a legitimate national security investigation without offering proof of either.

165. Without this proof it also makes claim to the applicability of (b)(7)(E). It then alleges that "disclosure" would "impair" the "future effectiveness" of the techniques and procedures used against Dr. King.without proof that there would

or could be a "disclosure." (The Department here substitutes "reveal" for "disclose.")

166. The operations against Dr. King used federal power and funds in the furtherance of Director Hoover's paranoidal weltaunschauung, not on genuine law enforcement or national security investigations. In pursuit of Director Hoover's objectives, the FBI used a variety of techniques and procedures. However, it has made all of them public. I have followed this closely for a decade. First, the FBI leaked details. Then, after Director Hoover was safely dead, his survivors confessed his sins for him, seeking absolution for themselves. I have read their prepared testimony and the published versions and I have read the Senate report. These leave little doubt that there remains no secrecy about the techniques and procedures they used, from live informants to poison-pen letters to fabricated tapes to electronic surveillances to the mails and even to efforts to prevent the awarding of the Nobel peace prize after it was announced and to cancel an interview with the Pope after it also was announced. (Perhaps these last are among the unspecified reasons SA Small cites diplomatic immunity without referring any records to the State Department.) The methods also are known, including such niceties as exploiting the prior criminal records of one in Dr. King's office to compel service as an informant inside his office, using non-FBI personnel in some of the more delicate and sensitive exploits and seeking to influence college administrations, all well-known practices.

167. All of these operations against Dr. King ended with his death more than ten years ago. Since then, as a result of many exposures, some forced by FOIA and PA, some seemingly voluntary and some because agents involved "defected," there has been considerable "disclosure" of all sorts of FBI techniques and procedures. The claims to exemption are general and conclusory. From my extensive study over a long period of time, I believe there remains no real possibility of "disclosure" of anything not already known about these techniques and procedures. There is no government affidavit even alleging that any technique and procedure not already known would be made known by any withheld record.

168. In all my prior experience when I have obtained copies of what was withheld it became apparent that withholding had not been justified. While in some instances the withholding may have been little more than stonewalling to waste me and my remaining time, in most instances what had been withheld turned out to be what was embarrassing to officialdom, which made false claim to exemption to avoid

exposure of the embarrassing.

169. Much of the Depattment's allegations is rhetoric. With regard to the Privacy claim (Memorandum, pages 9 et seq.) the claims fly into the face of the May 5, 1977, policy statement of the Attorney General himself. In the Motion (page 11) the feigned emotion is passionate in forecasting "wholesale release of ineesti-gatory files." While I read this with a sense of deja vu (see Paragraph 86 re C.A. 2301-70), I also compare this with the FBI's decision to release some 100,000 pages of JFK assassination iavestigatory files. To now that is the "wholesale" maximum. Initially, Director Hoover released most of the thousands of pages provided to the Warren Commission. These are investigatory files rich in sources and names not withheld. There were no excisions. That also was "wholesale." It was an appreciable portion of some 300 cubic feet of records. Mr. Metcalfe himself is now presiding over another "wholesale" release of other investigatory records to me. In C.A. 75-1996 the FBI opted to provide me with about 50,000 pages of investigatory files in substitution for my specific and much more limited request. I can see no possibility of any "wholesale" volume approximating what the FBI has released to me.

170. It is represented (Motion, page 19) that "this may be the first situation even in which a component of the Department of Justice (or perhaps any federal agency) has taken custody and control of local law enforcement agency records under circumstances leading to such FOIA susceptibility." (The implication of these records being only copies is without support.) This representation is not factual. Aside from some of these same Memphis records included in records provided to me are similar records of the State of Texas, Dallas County and City, the State of Louisiana, Orleans Parish, and of other local agencies.

171. In my past experience these doomsday forecasts have never been justified. From my extensive knowledge of this subject matter, they now are even less justified. From what can be ascertained through the withholdings these have the purposes of prior catalloguings of alleged impending disasters, the continued hiding of what officialdom wants to hide.

172. The Attorney General has found the King assassination to be an historical case. Deputy Civil Division Chief William Schaffer testified to the Congress that it is a "unique" case of great historical importance. Yet the records in this instant cause, as in my C.A. 75-1996, were processed without consultation with what is publicly known. The free expert subject assistance I offered the FBI was refused. This was not limited to my offer of a consolidated index to books. I offered free consultations

by phone.

173. To me as a subject expert in this "unique" case of such great historical importance, the bottom line is that in all the Department's motions and memoranda, in all the affidavits, there is not a single proof that any of the withheld information is not publicly known.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Befoee me this __________ day of June 1978 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires ____________________

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND