7/10/78

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

AFFIDAVIT

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

1. When I asked the Court to hear me at the calendar call of June 26, 1978, my purpose was limited to informing the Court that once again the Government had misinformed the Court. I desired to do this under circumstances that would permit Wigmore's engine to run, with the Government afforded full opportunity to deny or rebut anything I would have stated.

2. Throughout the long and to me painful and costly history of this case, the Government has regularly made statements to this Court that are not faithful to fact.

3. From the time I proved the Government's initial affidavits were falsely sworn, the Government has been reluctant to make any statements to this Court under oath. Instead, it has FBI agents present and able to make statements that are not under oath. These statements are also ones made without claim to first-person knowledge.

4. In fact, these statements are not made on first-person knowledge.

5. Government counsel, with regularity, from the first calendar call in this case, have made statements to this Court that are not factual.

6. As these statements relate to compliance in this case, I have not been afforded an opportunity to cross-examine any of these Government representatives who have misinformed and misled this Court.

7. The Court made reference to people "popping up" to be heard. All these pop-ups have been on one side, the Government's side. In almost two and a half years I have been called as a witness one time. On one occasion I also was permitted to address the Court.

8. On that occasion I informed the Court that, from my long experience in such matters and based on my subject-matter knowledge, there would be indefinite noncompliance unless the Court ended the systematic and deliberate misinforming of the Court by the Government.

9. On the one hand the Court has recognized me as a unique expert on the matters before it and had me serve the Government as its consultant; yet on the other hand, having so accredited me, the Court refused to hear me on questions of fact I believe are relevant and are before the Court.

10. As a result of the Court's not heeding my 1976 statement to it and my forecast based upon personal experience and subject-matter knowledge, this case has been prolonged. Matters then unresolved remain unresolved. The Government has simply ignored this Court, including the order of this Court. It has made promises of compliance and other similar representations to this Court and has not honored its word to this Court and to me. As a result, the time of this Court has been wasted, what may be an appreciable portion of what remains of my life and work have been wasted for me and noncompliance remains the actuality.

11. Should the Court so desire, I am prepared to take the stand, subject to cross-examination and the penalties of perjury, and go through the transcripts of the calendar calls in this instant cause, specify to the Court what misinformation was presented to it by the Government and provide proof that in an appreciable percentage of these instances the misinforming of the Court was not accidental.

12. I am concerned about the denial of my rights and the wasting of my life and work by these and other means. I also am concerned that when the Government is able to systematically misinform and mislead courts, the Constitutional independence of the courts is endangered.

13 What the Government has been able to do by these regular and unsworn misrepresentations to this Court amounts to an assault upon me, my integrity and my work. This is consistent with a pernicious and persisting campaign of the same nature carried on by the Government over a period of years to detroy my credibility and that of my work as it has been entirely unable to do by any other means.

14. I have had but the most limited compliance with my FOIA and PA requests for records relating to me. I have made these requests of a number of agencies, not only the Department of Justice and the FBI. Not one record provided includes an accurate reflection of any serious error in my writing.

15. Because this Court has allowed these unfactual allegations about me to

be made on the record while not permitting me to cross-examine or address and refute them, this Court has permitted the creation of still another record that can be circulated in Government and other channels to undermine the credibility of the work the Government cannot refute.

16. Now that I am approaching the end of my life and have made arrangements for all of my records to be freely available - and I have roluntarily waived any and all privacy rights for myself in these arrangements - I am anxious that the vicious campaign to which I have been subjected for so many years not be permitted to remain unquestioned or to be added to in the form of a permanent court record.

17. When I asked the Court to hear me on June 26, 1978, I had in mind taking only a few moments to inform the Court that once again it had been misinformed by the Government. From the brief notes I made, I would have spoken but a few minutes unless the Court had asked more of me.

18. In what follows I quote and address the few matters about which I had made notes. I provide the Court with more detail than I had intended in person because I was aware of the number of other persons in the courtroom. I had no knowledge of the reason for their presence but I assumed they required the time of the Court.

19. Prior to doing this I refer to the Court's observation that in another case, I believe Meeropol, matters had come to proceed in the direction of greater compliance.

20. In the older cases those in the FBI to whom offenses might be attributed have largely, if not entirely, left government service. I am also informed that Mr. Shea and the appeals machinery of the Department have been closely involved in the other case. Neither is true in this instant cause. Moreover, in this instant cause there are several live men in jail. One is James Earl Ray. As a direct consequence of what is at issue in the records relating to the Alton bank robbery to which Mr. Lesar referred on June 26, 1978, one brother, John Ray, was returned to jail only a few hours before his parole was to become effective.

21 One of these FBI officials agsinst whom offenses have already been charged is J. Wallace LaPrade. Mr. LaPrade has recently attained considerable international attention from his use of FBI facilities and his high position for an assault upon the Attorney General himself. In this unprecedented act, for which he has not been punished, Mr. LaPrade represented that in the long series pf law violations for which he is responsible, including "black bag" jobs, he and those under him in

the FBI were doing no more than protecting the nation from terrorists. This is false as it is pertinent in this instant cause. From a record withheld in this instant cause it would appear that the late Dr. King was such a "terrorist." (SA Horace P. Beckwith, to whom the Court gave ear on June 26, 1978, is reported to be an unindicted co-conspirator in a similar case involving former Acting Director L. Patrick Gray and other formerly high FBI oficials.)

22. Files the FBI has refused to search for me in this instant cause include those of the Director. (I have reason to believe that the FBI is refusing to process these political files for the more limited request of another requester, with whom I am cooperating, because once these files are processed it will no longer be able to withhold those records from me.) Recently someone else obtained some of those files. I attach as Exhibit 1 a page from a record from the Director's files showing that when Mr. LaPrade was Acting Special Agent in Charge in Milwaukee, he was involved in the nefarious acts committed by the FBI against Dr. King.

23. I am informed that Mr. LaPrade was Special Agent in Charge (SAC) of the St. Louis office at the time there was a breaking and entering of the home of James Earl Ray's sister, Mrs. Carol Pepper. I can provide the Court with FBI records that, when translated from special FBI semantics, amount to a directive from FBIHQ to break into Mrs. Pepper's home and seek records she was suspected of having.

24. It is the theory of the House Select Committee on Assassinations that John Ray participated in bank robberies to finance the travels of his brother, James Earl Ray, and that Mrs. Pepper somehow was the bag woman. The only relevant robbery within the committee's suspicion is that of the bank at Alton, Illinois. A decade ago the FBI cooked up the same baseless story. The FBI then leaked its fiction to the press in an effort to pretend that it was getting somewhere in its investigation of the King assassination. This FBI leak also had as its purpose explaining how James Earl Ray was financed in a nonconspiratorial manner. All the other House committee suspicions are irrelevant because they involve banks robbed after James Earl Ray was captured.

25. Several years after James Earl Ray was captured, John Ray was charged with indirect participation in still another bank robbery, as the driver of an alleged "switch" car. The plain and simple truth is that by this time his supposed career of successful bank robberies had left John Ray so impoverished he was not able to pay a lawyer to represent him. If he had been, he might not have been convicted. One of the actual robbers was acquitted because of illegal acts by the

police. This robber actually wound up owning the loot. Another robber, an escapee on an earlier charge, when apprehended in California, was sentenced to a total of 18 months. John Ray's sentence was 18 years and he was not even charged with the robbery.

26. John Ray was convicted on the basis of evidence the FBI claimed to have found in his automobile when it searched his car. This was after a search by the sheriff failed to find what the FBI claimed to have found. The money stolen from the bank was ruled admissible as against John Ray, who was not alleged to have stolen it, but it was ruled inadmissible against the man who had actually stolen it.

27. One of the judges who sat on the John Ray case is now Director of the FBI.

28. When John Ray was a witness before the House committee, he demanded that his testimony be public. The committee refused to permit him to testify in public.

29. When John Ray refused to confess to crimes he claims he did not commit, the committee told him it would see to it that he did not obtain his parole. John Ray was then in a halfway house. Later he obtained regular employment.

30. The committee made good its threat against John Ray. It asked the Department of Justice to have him returned to jail. The Department, without providing John Ray any opportunity to confront any of the alleged evidence against him, bowed to the committee's demand and returned John Ray to jail.

31. From this encapsulation it is, I believe, apparent that the withholdings relating to the Alton bank robbery serve purposes other than the nonexisting FBI concern for the rights of privacy of those who were arrested for that crime.

32. This illustration is representative of a considerable amount of other withholdings by the FBI in this instant cause.

33. At no point did SA Beckwith state to this Court that the names of those actually charged with the Alton bank robbery were not within the public domain.

34. At no point that I can recall has the Government ever stated to this Court that anything it withheld under various claims to exemption was not within the public domain.

35. In no single one of the many instances in which I have given the FBI proof that it was withholding what was within the public domain has it ever provided me with the information it withheld.

36. The Court also commented that the consultancy arrangement had come apart. This reflects the fact that the Court has been misinformed regularly by the

Government. Once the Court directed me to provide this service to the Government, I did so as best and as expeditiously as I could. Some details follow. Rendering these services to the Government, which has yet to repay even the nominal cash expenditures it required of me last November, consumed more of my time than the writing of several of my books. There is no time from the time the Court had me serve as the consultant to the Civil Division that I did not keep it informed of my progress. I do not believe that my completing the draft of a memorandum that in size is equal to the manuscript of a book represents any "falling apart."

37. In what follows I quote the short notes I made during the calendar call of June 26, 1978, and add brief explanations. As evidence that I am not extending this, I attach as Exhibit 2 the almost illegible notes I then made.

38. "Never gotten this kind of systematic listing." This is approximately what Government counsel told this Court.

39. There is no condition under which I was to supply the Government with any "systematic listing" of any kind. The obligation imposed upon me was to act as the Civil Division's consultant based on letters I had written and notes I made for entirely different purposes. (In writing those letters and making those notes, I did not and could not visualize this use of them.)

40. However, this is not to say that I never provided the Government with any kind of "listing," nor is it to say that what I provided was not addressed to the ostensible purposes of this consultancy. It was. I have, in fact, verbally and in writing, provided the Government with an extensive listing of precisely these kinds of cases. This has been my practice from the time I received the very first records in this instant cause.

(41. Only the day before this status call did my wife and I complete the rough draft of the last installment of what had been asked of me. It is based entirely on records in the possession of the Government, almost all what I wrote it. Most of this was to the FBI crew who processed the records.)

42. Prior to the consultancy I did not limit myself to a mere list. I took a considerable amount of entirely unpaid time to provide explanations and proofs. These proofs included my providing the FBI with copies of its own records. I also provided copies of published information to show the FBI that it was withholding what is within the public domain. The contrary representations to this Court are not truthful.

43. This is separate from and prior to the work I have done under the

consultancy. I began that work promptly, worked on it whenever working on it was possible for me and often when I should not have. I have given Mr. Lesar more than 200 pages of this memorandum. Throughout I have done as with other consultancies, even when in this instance it was against my personal interest. I undertook to inform the Civil Division of problems and possible vulnerabilities - how it and the Department might be hurt. I did not hide or reserve what I could have for my own use against it in court as the most casual reading of this long memorandum will disclose. At the same time, I provided as extensive a "listing" of specifics as the nature and content of my letters and notes permitted. I then went further and reviewed the FBI's own FOIA worksheets in this instant cause. While perfection is not a human condition and the nature of this consultancy is exceptional if not unprecedented, I believe that any dispassionate reading of the draft I have not had time to read will disclose that I have been honorable, ethical, entirely unselfish and have earned anything but the kinds of baseless and untrue allegations regularly made to this Court by the Government.

44. The Government foreclosed itself from receiving any copies of installments of the memorandum directly from me because, although it had engaged me and not Mr. Lesar, it insisted that I not write it directly or give it anything except through him. Although I could not learn even the conditions of the consultancy or what was expected of me under it from the Government, I gave Mr. Lesar the first part after I completed it. I handed him the second part in the presence of Government counsel the day after it was completed, certainly as rapidly as I possibly could do this. It is the Government, not I, that imposed the added burden of reading the memorandum on Mr. Lesar. I can think of nothing the Government did not do from the outset to foreclose itself from the results of my work. I also can think of nothing it did not do to discourage me from doing any work on the consultancy, from not repaying my expenses to not telling me what or when it would may me or even responding to my letters.

45. Having foreclosed itself, the Government repeatedly complained to the Court that it had received nothing from me. As it relates to the consultancy, this not only is not true - it is the Government's own insistence. As it relates to other and earlier means of my informing the Government, it is totally false, as the second part of what I have drafted leaves entirely without question. <u>This lengthy part comes entirely from what I did provide the Government over a long period of time</u>.

46. If this Court desires the copies of this correspondence from which I

prepared the second part of the memorandum, I will provide them.

47. The formulation "this kind of systematic listing" is not accidental. On prior occasions I informed the Government's new counsel that it is false to represent to this Court, as had been represented, that I had provided "nothing." This reformulation of an older untruth is, I believe, designed to be prejudicial to me and to again mislead this Court. I believe this Court's statement that the consultancy had "come apart" reflects the success of this misrepresentation and those made earlier.

48. The next words in my notes are "Aeromarine - no replacements - Wiseman."

49. The first records provided to me in the very earliest stages of this case relate to the purchase of a rifle at the Aeromarine company in Birmingham, Alabama. Names were withheld, without any need, even excuse. All was extraordinarily within the public domain, beginning with extensive news coverage and particularly in a series of articles in Look magazine by William Bradford Huie. Had there been even an irrational claim to any exemption in these withholdings, even an irrational basis was eliminated by all of this and much more being placed in evidence at the guilty plea hearing seven years earlier. The first page of the first such record is attached as Exhibit 3.

50. In the presence of SA Parle Blake of the Office of Legal Counsel and with Mr. Lesar present, I informed SA Thomas Wiseman that he was withholding the public domain and filled in the names. I asked for unexpurgated records and was refused. When I informed the FBI that the Court had stated such information might not be withheld, SA Wiseman again refused. He said, "I'll see you in court first."

51. This has been the rule throughout the entire case, not the aberrational exception of the long-delayed beginning. No such records have been replaced, regardless of what proofs I provided the FBI or informed Government counsel or what this Court ordered.

52. "Everything to accommodate," as I now recall had to do with the consultancy and the providing of records. With regard to both, this representation is baseless and in fact is the opposite of reality. No records have been replaced, as stated above. Unsearched files remain unsearched. No effort has been made to respond to the Items of my request. Promises made in camera to this Court relating to the records that were being obtained for me are unkept promises.

53. There was no "accommodation" to me in misrepresenting to this Court to force me into the consultancy. These misrepresentations were made the very first

working day after I provided the Government with three sets of copies of reasons why the consultancy was not a proper step at that time. The Government did not discuss this with me prior to misrepresenting to this Court to force me into the consultancy.

54. Rather than an "accommodation," the consultancy was a major intrusion into my life and work. It was a stonewalling device and it shifted the burden of proof onto me. The plain and simple truth is that I offered the Government a number of more appropriate alternatives. I can think of no reason for not accepting these other alternatives, which would not have entailed hiring me, except to stonewall a case that is exceptionally embarrassing to the Department, as well as to the FBI.

55. The time this required of me is time I could not devote to my writing. But then my writing is not conspicuous for its praise of the Department or the FBI in the King case. My earlier writing does not ignore the Civil Division's record in my FOIA case for the extradition records in the King assassination, C.A. 718-70.

56. "Arrests - I took up with FBI." This means that on a number of occasions I took up with the FBI its persistent withholding of information relating to arrests, not merely those mentioned by Mr. Lesar relating to the Alton bank robbery. I gave it copies of its own records as provided to me to show its withholding of public information.

57. "Dunaway - early case - gave copies of records." Among the first records I received in this case were heavily expurgated records relating to the finding of the murder victim Dunaway, whose name was withheld. It was all over the papers, with his alias and his gangland connections. Other nonsecret names were also withheld in those records. Still again when I informed the FBI that it was withholding what is within the public domain, no unexpurgated records were ever provided.

58. One does not have to have copies of the news accounts of the finding of a gangland corpse in the trunk of an automobile at the Atlanta airport to be aware that the matter was not secret. Even a graduate from the FBI Academy or an FBI FOIA analyst should be aware of this.

59. Atlanta is where the then unidentified and missing "Galt" was known to have abandoned the white Mustang that figures in the assassination investigation.

60. I believe this illustration is relevant to the false assurances given to this Court by SA Wiseman and then Government counsel that there never was any suspect other than James Earl Ray. (There were, in fact, hundreds of other suspects, 400 in the first two weeks and so described in the FBI's MURKIN files the searching of which

SA Wiseman attested to.)

61. "False on prisoners and I gave them samples." If SA Beckwith was competent to make the representations he made to the Court about protecting prisoners, then he knew he was informing this Court falsely. He personally also is responsible for the FBI's breaching of the compromise on prisoners that it asked of me in November 1977.

62. I gave the FBI many illustrations to disprove its concoction that it had to withhold the names of prisoners to "protect" them. (From the nonconspirators, no doubt.)

63. Two of these - and there are more - illustrate.

64. One is a pathological liar the FBI itself described as at best undependable, Raymond Louis Curtis. When the FBI withheld his name on review, it was sometimes written back in. More relating to Curtis follows beginning in Paragraph 75. If the so-called OPR has any backbone on "motive," this pathological liar Curtis is that backbone.

65. Another former prisoner who sought to commercialize this great tragedy used the names Billett and Buccelli. Before I received the FBI's own file copies of newspaper stories about him, I sent it copies of syndicated newspaper stories I had. Billett-Buccelli, like Curtis, went public voluntarily, dishonestly and in an effort to exploit fabrications.

66. In all the time since I called these and similar matters to the attention of the FBI, I have had no response and I have not received any unexpurgated records.

67. After the calendar call of I believe May 10, 1978, Mr. Lesar, Government counsel and FBI personnel, including SA Beckwith, and I met briefly in the corridor. I asked SA Beckwith about the records relating to prisoners I had been led to believe in November would be provided under a compromise. His response was that the FBI would not provide any more records until this case was entirely at an end.

68. "Guards - want records." This relates to those who guarded James Earl Ray when he was in Shelby County Jail im Memphis. All those names are in the record of the 1974 evidentiary hearing.

69. On more than one occasion I offered the FBI my index to the transcripts of the evidentiary hearing. As I have previously informed this Court, the FBI steadfastly refused all copies of any and all indexes. Contrary to SA Beckwith's representations made to this Court that the indexes to books were used, as an article of faith what is in the books on the subject was systematically withheld from me by

the FBI. In its most ridiculous form the FBI withheld what I personally published. I sent it copies of its own records with needless as well as unjustified withholdings, of my own writing (which it had in any event) and of the phone book because it also withheld what was in the phone book on a privacy claim.

70. The calendar call of June 26, 1978, is not the first occasion on which the Court heard unsworn and false statements from those who know better than they have told this Court.

71. I believe it is unfair to hear one side only, whether or not the Court is in a position to evaluate what it is told. I believe it is particularly unfair when the Court is regularly misinformed and misled by the Government and the Court hears the Government only.

72. On June 26, 1978, what this Court was told by the Government really consists of baseless and prejudicial accusations against me. I believe that I should not again have had to sit in silence and not dispute these prejudicial misstatements. I also believe that it is additionally unfair to permit them to remain uncontradicted in a permanent record in an historical case.

73. My note does not include SA Beckwith's misleading allegations about the exposure of informants. The fact is that there is no such question involved in the withholding he pretended to be addressing. The fact also is that the FBI has disclosed the identity of informants to me and not to me alone in this instant case. The fact is that when the FBI inadvertently disclosed the identity of an informant in a record I notified it so it could remove that identification from the copies it has available in its public reading room. And the fact is that I have never asked the FBI to disclose the identity of any of its informants. I believe this exemption is a proper and necessary exemption. The FBI systematically abuses this exemption in making false claims under it. But any representation that I sought the names of informants with regard to the Alton bank robbery is false.

74. Because I have stated that representations to this Court by SA Beckwith are not faithful to fact, I attach proofs from my files.

75. Attached as Exhibit 4 are the first two pages of the first records in a separate file of "prisoners" I established. These are thus a random selection. They are not the only proofs of the fact that the FBI does not withhold the names of all prisoners to "protect" them.

76. The withholding of prisoners' names is consistent with further covering-up by the FBI. The case of Raymond Louis Curtis referred to in Paragraph

64 above is illustrative.

77. Exhibit 5 is Serial 4831 of the FBIHQ MURKIN file. It shows that the FBI originally withheld the name of Raymond Louis Curtis, even though this record itself discloses that Curtis had gone public through an effort to sell a story to Ebony magazine.

78. Exhibit 6 is a copy of a clipping reflecting the fact that beginning in April Curtis had begun to receive news attention. This is further proof that the initial FBI effort to withhold Curtis' name was not and could not have been motivated by interest in preserving his "privacy" or in any form of "protecting" him.

79. Exhibit 7 is the first page of the index to the 1976 book by George McMillan, one of those books SA Beckwith misled the Court to believe was consulted in the processing of records in this instant cause. Nine pages of this book recount Curtis' stories.

80. On the day of publication of the news story, Exhibit 6 above, the FBI Kansas City Field Office filed a teletype describing Curtis as a "pathological liar." (Exhibit 8)

81. The FBI's own evaluation of Curtis is reflected in Exhibit 9, page 2 of Serial 4794 of the HQ MURKIN file. Curtis is of "almost complete unreliability."

82. Despite all of this and more like it, the Office of Professional Responsibility (OPR) elected to pretend that Curtis was a dependable source. This is reflected in Exhibit 10, the OPR's notes on FBIHQ MURKIN files. (Although the name of "Devilish Nick" is withheld in Exhibit 10, elsewhere it is disclosed.)

83. Withholding any information about Curtis, beginning with his name, serves to accredit the incredible, that the OPR in its report actually took these fabrications at face value after they were proven to be fabrications by the FBI. The OPR used them in its section titled "Motive." This misuse is among others like it on pages 94 and 95 of the OPR report, attached as Exhibit 11.

84. While my purpose here is to inform the Court about the fidelity of SA Beckwith's unsworn representations to the Court, I state that what is true with regard to Raymond Curtis is also true with regard to other prisoners whose names are withheld.

85. SA Beckwith executed an affidavit in C.A. 77-0692, which Mr. Lesar filed when I was not well and after this Court held that the OPR's records were not within my request.

86. Mr. Lesar asked me to provide an affidavit in response to that of SA

Beckwith. Of direct relevance in this instant cause, as well as bearing on the traditional fidelity of SA Beckwith's affirmations, are pages 19 through 23 of that affidavit, together with the exhibits cited therein.

87. Little in SA Beckwith's affidavit is factual. It is not represented as based on personal knowledge. It does not even identify file numbers or Serials correctly. On the essential points it is false, grossly false as my affidavit, Exhibit 12, shows. My checking of SA Beckwith's affidavit led to proof of further and deliberate withholdings in this instant cause and to proof of the corrupting of the worksheets on the processing of records in this instant cause to hide this withholding from me. The identical 29-page Atlanta record should have been provided to me in this instant cause from FBIHQ files and from Atlanta Field Office files under the stipulations. It was provided to me from neither. Instead, the worksheets were executed with false statements about the number of pages in the record, eliminating almost all of the actual pages.

88. I believe that those of first-person knowledge were not asked by the Department or the FBI to execute the false affidavit SA Beckwith executed because by now the Department and the FBI know that I am not unwilling to call an official lie a lie. In this case it could be held to be false swearing to the material. It is common within my extensive experience for this dodge to be used, to have one without first-person knowledge execute a false affidavit and then be able to defend it with the claim of not having personal knowledge. This was the practice in the stipulations in this instant cause, a practice not alluded to by Government counsel's unfaithful references to these stipulations on June 26, 1978.

89. The first copies of FBI worksheets I received in this instant cause after my affidavit in C.A. 76-0692 include a reflection of the FBI's learning from that affidavit. The FBI omitted the total number of pages in the original document in its records of the processing of these documents. (See Attachment A in Exhibit 15 following.) The only apparent purpose served by this change is to make my catching it in other such deliberate lies more difficult, if not impossible. (See also Paragraph 98.)

90. Another matter that came before the Court on June 26, 1978, is that of "missing attachments." The FBI's own list of these missing attachments is attached as Exhibit 13. Comparison of the FBI's list with my own list reflects the inadequacy and incompleteness of the FBI's list.

91. Some of the allegedly missing attachments were not missing at all,

although in response to repeated requests I could not learn from the FBI what it had done to locate these allegedly missing attachments. From an OPR record the FBI appears once again merely to have been dishonest. While the FBI waxed eloquent to me in seeking to persuade me it had left no stone unturned in its allegedly super-human quest, this OPR record reflects that the FBI was merely lying about what its own records show. Attached as Exhibit 14 is an OPR notation relating to three missing attachments in Section 27 of FBIHQ MURKIN files. (The FBI's worksheets actually list others in addition to these three.) It states of these "missing" attachments that FBI "notations on the communications show the enclosed material has been detached and kept in C.R.:" Three serial numbers follow, 2636, 2654 and 2655. Serials 2636 and 2654 are included in the FBI's list, Exhibit 13, Paragraph 90 above. Both are quite material in the Ray case. The FBI describes the first as "Psychiatric report on Ray" and the second as "Missiouri State Prison bank records," again relating to Ray and the FBI's pretenses about his funding after his escape from that penitentiary.

92. Although the FBI's own list of missing attachments provided to me in November 1977 lists a missing attachment to Serial 2636, the FBI's own worksheets reflect no such missing attachment. On the worksheet this serial is identified as "Kansas City AT" and of one page only. There are similar identifications for Serials 2654 and 2655, both of the same source, description and length, a single page, but the worksheets are erased under "Remarks" where it had stated "UTL."

93. "Referrals" was another matter before the Court on June 26, 1978. Some referrals, first made in 1976, have not yet been acted upon and copies have not yet been provided. I made repeated requests of the FBI that it ask for response by those agencies to which referrals were made. The FBI refused. I was informed by SA John Hartingh that the FBI's obligation under the Act is limited merely to sending the records in question to these other agencies. Some of these referrals are included in the memorandum I prepared for the Civil Division.

94. Under date of June 8, 1978, I received some copies of some referrals from the FBI. (Exhibit 15) They are not complete. Missing referrals are not accounted for. Instead, the entire question of any missing referrals is totally ignored.

95. After several years of such stonewalling, described to this Court as good-faith efforts to "accommodate" me, the laboring mountain of the FBI delivered itself of a mouse of records allegedly withheld under claim to classification. Also under date of June 8, 1978, I received a grand total of 10 pages of what FBI

FOIAPA Chief Allen McCreight described as records that were "declassified." My response was written on June 11 and June 12. On June 12 I forwarded a copy to the Department as an appeal from the withholdings. I sent a clear copy of my letter to Mr. Lesar for the Civil Division. Because my file copy is unclear, the copy attached as part of Exhibit 15 is retyped for improved legibility.

96. This "declassification" is a frivolity. As originally provided to me these records had not been classified. The copies provided under date of June 8, 1978, had been classified after this suit was filed, most after incomplete copies had been provided to me. The spurious nature of the exemptions claimed is apparent in what I sent Mr. McCreight. I also include a name he withheld under claim to (b)(1). (That name is public in other records.) The "declassified" content was not subject to classification to begin with. The FBI continues its own revisions of the Act to stretch it and provide a figleaf to cover the nakedness of its misuse of the Act to withhold. I include direct quotations of the FBI's revisionism and of the language of the Act.

97. These are only some of the problems with Mr. McCreight's letter of supposedly belated added compliance. The letter itself is not an honest representation of the records it covers, as my letter to Mr. McCreight reflects. From the time I wrote Mr. McCreight until now I have had no response from him with regard to the specifics of my letter. (My letter includes many details not repeated here.)

98. In Paragraph 89 above I refer to the FBI's alteration of the printed worksheet form used to cover the processing of the 10 "declassified" pages of Attachment A. What the FBI actually did to its printed worksheet form entailed a considerable amount of hand work. This can be seen by comparing the worksheets for Attachment A with the unaltered form used for Attachment B. (Both in Exhibit 15.) The FBI took the existing printed form, which has a double column headed "No. of Pages," and altered that part of the printed form by hand. In the printed form the lefthand column is headed "Actual," the righthand column is headed "Released." This reflects the number of pages withheld, if any. For the Attachment A worksheet the FBI obliterated by whiting out all between the outside margins of the double column. It eliminated the vertical line dividing the two columns for "actual" and "released" under the number of pages. It also whited out the headings of these two columns, no longer indicating that it is supposed to provide the actual number of pages in the records. Because of the whiting-out, it also became necessary to eliminate and then replace the horizontal lines which intersected the eliminated vertical line.

The horizontal lines were inked back in but not by a professional. The alterations are quite visible to the unaided eye. In place of the two kinds of pages, "actual" and "released," the FBI hand-lettered in the word "REVISED." Thus, with the first entry on the Attachment A worksheet there is a single number entered, "1". Actually, this record, 44-36681-5510, is of six pages. The impression given by the "revised" worksheet is that Serial 5510 consists of but a single, now-released page. The corrupted worksheet form gives this deceptive and misleading impression. This also is true of the next Serial, 5513, indicated as of "1" page. Two pages were disclosed to me earlier. While it was engaged in "declassifying" and "revising" the FBI did some forgetting, too. It managed to classify the date of Serial 5510, forgetting it had already disclosed the date, 1/21/69. Were the date subject to classifying and withholding, there would still be the Orwellian practice of "declassifying," meaning to withhold what was not withheld prior to "declassification." The result is a dishonest representation. Trying to perceive and appeal all these kinds of official tricks is enormously time-consuming. It simply is not possible to keep these people honest when they even corrupt printed forms to give a crooked count.

99. I have no way of knowing how many pages of how many records among these almost 50,000 pages were actually classified, whether or not properly classified. I am certain there were more than these 10 pages indicated as classified on the original worksheets. Judging from the examples provided by Mr. McCreight's mailing of June 8, 1978, there is no way of knowing how many more records were classified ex poste facto and marked as exempt for an indefinite period under the General Declassification Schedule.

100. I am also certain that many pages of many Memphis records were classified. Mr. McCreight's letter of June 8, 1978, makes no reference to them.

101. Given the meaningless nature of the few pages of what was "disclosed" after "declassification" in Mr. McCreight's mailing of June 8, 1978, there appears to be no reason for the long delay in this "declassification" and "release."

102. Assuming what I have no reason to assume, good faith in the searches, and what I also have no reason to assume, that the searches were made with due diligence, there are many other obvious sources of records not provided. These range from the current files and the storage files of Departmental components, such as the Civil Rights Division and the Office of Professional Responsibility, to a number of components of the FBI whose files the FBI has refused to search. (With the June 8, 1978, letter a few copies from the Civil Rights Division's files were provided.)

The FBI also has "Do Not File" files, of which I have found reference to as many as three numbered "Do Not File" files on a single record. There are the FBI's so-called "Dead" files, of which I have found it opening more than one new "Dead" file for a single record. There are code-named and acronymed files, like "June," as well as "June"-type records filed in other than "June" files as uses were made of them. The Director's files have not been searched in this instant cause. Over a period of more than two years I have asked for this and for a search of the files of the Attorneys General and their deputies, without response and, of course, without any compliance.

103. As examples of what such searches would disclose, I attach Exhibits 16 and 17. Exhibit 16 is an OPR record which establishes the falsity of the FBI's representations to this Court, that it cannot retrieve information by subject matter. Here we have the Civil Rights Unit of the FBI possessed of a considerable volume of relevant records I have not received and the proof that it kept a "tickler" on 35 different subjects. Exhibit 17 is four records from one part of the Director's "Official and Confidential" files that relate to Dr. King. This partial file, provided to another requester, is within the political Item of my request, which the FBI has been stonewalling for about a year. These four records are selected from the larger file because all four are clearly within the scope of the request as recognized by the FBI. (The first page is missing from the second as I obtained this partial file.)

104. Copies of this and similar records have to exist in other FBI files. They have not been provided to me.

105. Relevant to the dispute over prisoners and to Raymond Louis Curtis and misuse of fabrications by him is the fifth page of the third record in Exhibit 17. This reflects that the FBI deceived its own Director. It led him to believe in the outline of the case of "THE ASSASSINATION OF MARTIN LUTHER KING, JR." that everything this "pathological liar" Curtis said is true. On the Director's copy the part the OPR found so attractive is underscored.

106. As I have previously informed the Court, when the Civil Division asked me to become its consultant I recommended instead that it use its own paralegals or other personnel to work with me and my files. If the Civil Division had accepted this of the several alternatives I offered, it and I would not have been limited to letters and notes I prepared for entirely different purposes, notes that were never intended to be complete and are not complete, with regard to noncompliance. Countless additional instances of noncompliance and of incomplete searches

would have been available to the Civil Division at any time it desired - if this really had been its desire. I made similar offers to the FBI on many occasions beginning fairly early in 1976. I made them to former AUSA Dugan after the first status call in this instant cause, on or about February 11, 1976, almost two and a half years ago.

107. However, if my many offers of free, unpaid assistance had been accepted, the Department would not have been able to string out this case as long as it has and for this length of time have made my writing and other work impossible. Accepting my offers also would have made impossible the regular and false representations to this Court that cooperation was not available from me or was not provided by me.

108. Accepting the alternatives I proposed would have brought the Civil Division into direct conflict with noncomplying Departmental components that have a vested interest in withholding. These components are not limited to the FBI although certainly the Civil Division would have been forced to confront the FBI. As long as there is no Departmental willingness to confront the FBI in those cases in which it has a past with which it is unwilling to live under the Act, from my experiences cases like this instant cause will be strung out indefinitely, abusing all parties, including the courts and requesters.

109. Once the stringing out, all the stalling and stonewalling over the MURKIN file is ended, if that day ever comes, then a major area of confrontation with the FBI remains. The FBI's substitution for my information request, as I informed the Court when the Department proposed it, leaves many Items of my request without any compliance. (The Government has not provided any affidavit stating it does not have this information.) These are the tenderest areas for the FBI. All of its dirty-workings are not exposed. All of its illegal acts are not now a matter of public knowledge. All its failures in the major cases, of which the King assassination is one, have not been brought to light. And it may yet have to face the fact that from the beginning it has lied to this Court in this case and about its complying and capability of complying with the Items of my request. I have met no Government lawyers willing to face the FBI on these kinds of matters, as I have met none willing to do anything about the false and misleading affidavits the FBI has for all seasons and all occasions.

110. Successful careers in Government are not built on opposing the FBI. Survival in Government or other employment is not assured by earning the enmity of the FBI. My Washington experience extends backward for almost half a century. For

all this time it was well known that the FBI compiled files for political use and misuse - personal files on those who might oppose the FBI. My own files contain FBI records displaying its open contempt for more than one Attorney General. My files include Mr. Hoover's praises for subordinates who insulted Attorneys General.

111. What I have learned about the FBI's virtual assembly line for assuring noncompliance in what for it are sensitive FOIA matters cannot be entirely unknown to Government counsel. Once the FBI could no longer merely stonewall FOIA requests, for which I have some responsibility, it began the construction of new means for circumventing the Act. These also are not unknown to Government counsel. Deputy Assistant Attorney General William Schaffer, who makes noble speeches to the Congress, posed as a brave little mouse who asked me to give him a bell to put around the neck of the FBI cat. Once I held forth the bell and the ribbon, Mr. Schaffer became a timid and completely unavailable little mouse. And thus the subterfuge of the consultancy under which I have never received a single word of response from him or any others. Thus also the need to assail me for alleged noncooperativeness and the other knowingly false representations about me to this Court. The alternative is facing the kind of FBI character assassination that can be ruinous. I have been its victim, one of the earlier victims. I have personal knowledge of the hazard of incurring the FBI's displeasure.

112. One who does not fear the FBI and is regarded by it as an enemy is not well received by those with families to feed, children to rear and educate. Perforce, these people become more than merely counsel to the FBI. They become its servants or they fear its vengeance.

113. It did not require my services as Civil Division consultant for the Government to be aware of noncompliance and of long delays in any kind of compliance - even the kind of crooked "compliance" represented by the recent McCreight mailing (Exhibit 15). If my continuing efforts to keep the FBI and other Departmental components honest were to be limited to the kind of consultancy the Civil Division fixed upon me, the kinds of details this and my other affidavits provide would never become known.

114. This (Exhibit 15) demonstration of FBI dishonesties in this case, which is characteristic of its conduct with me in the case and with the records provided, coincides with renewed and entirely unjustified criticism of me before this Court, on the record, by those who share responsibility for the transgressions I bring to light. I am not responsible for the deceptions and misrepresentations and

the actual falsifications by the Department in this matter. Yet at each calendar call I find myself being criticized by it, regularly. As regularly I am not asked if I have any comment. When I did ask to be permitted to say something, I was refused while those who misinform the Court were permitted to continue to load the record with unfaithful and unsworn representations - even by an unindicted co-conspirator in a criminal case.

115. I do not know whether the Court has had any second thoughts about leaving me no real alternative in the consultancy matter or about placing any of the burden of proof upon a requester in an FOIA matter. I do believe that, absent some offense against the law, what I am able to do with my remaining time ought be for my personal determination. Otherwise, as a practical matter, I am forced into involuntary servitude. Under any circumstances, this kind of a situation is at the very least unwelcome. At my age, in my condition and with the amount of work other than thise case that I have undertaken, the added burden placed upon me by the consultancy is an extraordinarily heavy burden. I doubt that those who have their own conduct in this matter to justify work as long a day each and every day as I have done and still do. Yet over the consultancy I find myself in the position of the victim of a rape who is charged with being an attractive nuisance. I find myself regularly criticized, my character and integrity questioned, and the Court does nothing to ascertain whether or not the accusations are even within reason and refuses me the opportunity to utter a word in defense of my own reputation.

116. Prior to the calendar call of June 26, 1978, the record held some proof that I did follow the desires expressed by the Court on November 21 last and that I began immediately. Much more contemporaneous proof is available. It also held some proof that the Civil Division was totally unresponsive when I tried to communicate with it on this consultancy. In the ensuing months the Civil Division has not responded to me about a single matter or on a single occasion. It refused to respond when I asked what and how I would be paid. At the beginning of the obligation imposed upon me, I did not have even the scant regular income of social security. Yet no effort was made to have me paid, or to have my cash expenses repaid. I was not provided with the necessary equipment and ultimately I had to buy it. When Mr. Lesar undertook to learn when and how I would be paid, he was totally ignored until the Sunday night before a Monday morning hearing at which he might have said something about this. Then he was deceived so he would not say anything in court. I have done this work without knowing that I will ever be paid for

it. As I have stated, I have done it at the cost of work that has meaning for me, work that inevitably I now will never be able to do. During this entire period I have had no real social life and no day off. There are not many of the seven days of the week that I was abed as late as 5 a.m. There were more when I was up and about much earlier despite the state of my health. I don't know what more, under any circumstances, could be expected of me.

117. Each calendar call since I became the Civil Division's consultant has been converted into another mean and baseless impugning of me. With it the actual issues are evaded.

118. I see no way for this to end except by the ending of the consultancy. I therefore now end it. I had intended to review, edit and correct my work. Now, unless so ordered by the Court, I will not do this.

119. However, I have told Mr. Lesar that if he finds some compelling reason for it I will take the time to go over the rough draft. This is because I was not able to work on it without interruption. I was not able to work on it with any real continuity. Often I worked on it when I should not have been working at all. If Mr. Lesar does not find it necessary for me to go over this draft, I have asked him to give it to the Civil Division, with the accounting of my time I have given him. (It cannot be all the time I actually put into this project.) I have also given him an accounting of the time invested by my wife with the Civil Division's approval. (I certainly hope that she also will not be chiseled out of or delayed in receiving decent and fair compensation.) I have told him that unless he finds serious fault, anything other than the inevitable repetition, or anything entirely incomprehensible, I want to see this consultancy memorandum no more. I have asked him to inform the Civil Division that if it has any questions of me I will respond in writing to written questions only. I want no more verbal communication that can be misrepresented. I will have no more of the kind of demeaning situation that has been imposed upon me, on the one hand the total abdication of any responsibility by the Government, of even common decency in responding to communications, and on the other hand of being constantly affronted by mean and baseless accusations.

120. Unless this Court orders otherwise, if the Civil Division asks anything further of me, I expect it to be under a formalized and agreed-to arrangement put in writing, including payment.

121. Mr. Lesar has become my dear and cherished friend. When I know that

he has to work sometimes until 5 in the morning, I will not voluntarily accept putting him in the position of a go-between, which is the shabby, evasive device used by the Civil Division earlier in this matter. He was not the Division's consultant, I was. When I cannot pay him for his time, I will not voluntarily be party to wasting any of it. If the Civil Division has any questions, it can address me directly.

122. I believe it serves all interests, including the integrity and independence of this Court - which I believe has been seriously imposed upon by the Government in this matter - for any further matter relating to the consultancy to be in writing. (The Civil Division has what Mr. Lesar and I do not have, a staff of assistants, including secretaries.) If there are flaws in what I have done, I will rectify those flaws. But this does not require the kind of invidious and insulting conditions to which I believe I have been subjected.

123. Of all the representations made about me to the Court relating to the consultancy, there is one I can recall that approaches truthfulness by being a half-truth. I did decline to agree to another meeting in camera. But Government counsel avoided telling the Court why. I stated I would not agree to be party to any proceeding of which there would not be a transcript. My reasons had to do with this Court's independence and integrity as well as avoiding the situation in which I have found myself. This Court was imposed upon and spoken to untruthfully by Government counsel in the November 21, 1977, meeting in camera. I can prove that what I know was stated is not truthful. But in the absence of any transcript I cannot overcome any disagreement with my clear recollection of what this Court was told by Government counsel. This is why I wanted everything stated to be on the record.

124. I recognize that when the Court is faced with contradictory representations and there is no relevant live testimony upon which the Court may draw, the Court may have no independent means of determining which representation is truthful. One of the means by which this Court was persuaded to have me serve the Civil Division as its consultant was by the Department's contention that what I had by then provided was vague and indefinite, lacking specific reference to specific files, and that much was "incomprehensible." One of the persisting Government representations from the time I became the Civil Division's consultant is that I had provided "nothing." Determination of truth and fact can be made with ease from the Government's own records. I wrote many detailed and specific letters over a long period

of time. If the Government is asked to produce its copies of my letters, of its responses and of any actions taken in response to any of metters, the Court will have no difficulty determining which representations are truthful and factual.

125. After I prepared the foregoing paragraphs of this affidavit, I received the transcript of the calendar call of June 26 from Mr. Lesar. Reading the exact language of the representations made by the Department to the Court confirms my prior representations to the Court that it is being misinformed by the Department.

126. During this period there was a medical complication treatment of which causes further interruptions in my working schedule and time. It is among the factors that prevent revision of this affidavit to incorporate what follows.

127. The Department's misleading of the Court on June 26, 1978, ranges from underinforming the Court to untruths.

128. An example of simple misleading is Miss Ginsberg's statement on page 5: "... the Appeals Unit has looked at all the documents in this case before releases were made so that process has been completed." Only to the extent that Doug Mitchell, a totally uninformed member of the staff of the Appeals Unit, had "looked at" the released copies is this a fair representation.

129. I have discussed these kinds of matters with Quinlan J. Shea, head of that Appeals Unit. He has informed me that as a practical matter all his staff can do is look at what is withheld and the claim to exemption and to decide whether the claim can be appropriate to what is withheld.

130. Mr. Mitchell did not read all the documents presented to him by the FBI. He also has no knowledge of any documents not presented to him by the FBI.

131. To assure that Mr. Mitchell would not be able to know whether what was withheld was within the public domain, the FBI withheld from him all the published books on the subject.

132. Mr. Mitchell is not a subject expert. His factual knowledge is limited to what he can perceive as he examines only the portions marked for withholding by the FBI. From this kind of review it is not possible for him to determine, for example, if the FBI withholds what it has already released, as it has done.

133. Consistent with this is what I believe is a less accidental misleading of the Court by SA Beckwith on page 12: "Now the people that processed this material read a lot of the public books (sic). Mr. Harp, who did it, I think is well educated in the case."

134. SA Beckwith has personal knowledge of the fact that the FBI refused all my offers of indexes in a consolidated form. He has personal knowledge that the FBI also refused my index to the transcripts of two weeks of evidentiary hearings in Ray v. Rose. I believe SA Beckwith was present at conferences between Civil Division and FBI representatives and Mr. Lesar and me in November 1977. We then discussed the matter of the FBI's refusal of the indexes and its failure to use those printed in the books in question, as well as the fact that it did not give copies of these books to Mr. Mitchell.

135. SA Ralph Harp is not the only analyst who processed the records released to me. One, SA Goble, was removed at my request. Another is named Higgins. (After I named those analysts whose withholdings were most unjustified, the FBI withheld the names of all analysts from the worksheets provided in this and in other cases.)

136. Because I have appealed the withholdings by the FBI, the statement "so that process has been completed" is not accurate.

137. Representation to the Court that because of the stipulations I would "forego the requirement of a Vaughn v. Rosen statement" (pages 5 and 6) fails to inform the Court that the Department did not abide by these stipulations and that it also had failed to respond to my complaint about this noncompliance. It was the understanding that I would forego a Vaughn v. Rosen statement with regard to the FBI only if the FBI complied with the stipulations. The stipulations also provide for my making these complaints to the FBI, as I did.

138. I have already set forth for the Court proof of the deliberateness of the FBI's violation of these stipulations. One proof of deliberateness in not complying with the requirements of the stipulations is the FBI's indicating to the field offices what files they were to avoid searching. I obtained this proof from the New Orleans Field Office. By means of carefully worded teletyped instructions and an equally carefully worded draft affidavit, FBI Office of Legal Counsel SA Charles Matthews limited the searches of field office files. In addition, he made pointedly acceptable to FBIHQ the execution of an affidavit by one other than the one who conducted the searches. Consistent with this means of not complying, the FBI did not provide a list of the relevant field office files, as it was supposed to do. Moreover, when it did offer me a small number of records and I requested copies of some, the FBI then refused me the very records it had offered me.

139. Many months have passed since I complained about noncompliance with

the FBI's own stipulations. In these months I recall no affirmation of compliance with these stipulations and no compliance with the specifics of my complaints about noncompliance.

140. Miss Ginsberg stated to the Court (page 6), "If they have evidence that a certain person, his name or her name should have been released, we have been prepared all this time to take a look at it and talk about it." The record could hardly be more completely opposite this representation to the Court. I cannot recall the number of futile occasions over the past two and a half years on which we have "talked about it" with the Civil Division and more frequently with the FBI. I have undertaken to "talk about it" at the FBI when I was barely able to move. I have done this many times in person and at what I believe is to an exceptional degree in many letters that could hardly have been more totally ignored. I was specific about many names. No such records have been replaced.

141. Another consequence of this misleading of the Court is reflected in the Court's question on page 7: "The point is there is a burden to indicate what you are objecting to. Are you objecting to all of the deletions that have been made?"

142. If the department had not systematically misrepresented what I have been doing from the very first in this instant cause and had not misrepresented the entire matter of the consultancy, the Court would have known that as a matter of practice I regularly informed the FBI about specific withholdings and about classes of withholdings that appeared to me to be in violation of the Act. Some were in violation of the verbal order of this Court of June 30, 1976. While it is and was physically impossible for me to specify all the improper withholdings, I believe that what I provided the FBI in writing represents an extensive assuming of the burden to which the Court referred. As I have stated, this included providing the FBI with copies of its own records, copies of proof that it was withholding what is within the public domain, and many specific citations to File, Section and Serial Number, another matter about which the Court was misinformed by the Department.

143. Similarly, Miss Ginsberg states (on page 9), "But if the plaintiff wants something from the Government, they have to give us the information on which to base some sort of response to them." I have also done exactly this, many times.

144. With regard to one such "something," the matter of prisoners' names ,

Miss Ginsberg was present when Mr. Lesar and I discussed it with SA Beckwith. On June 26, 1978, SA Beckwith spoke of the withholding of prisoners' names. (page 15) The Court stated, "It is the other people involved I expect they would particularly like to know about. But anyway - " At this point SA Beckwith interjected, "But we did, Your Honor. Anytime we had information that the individual had mentioned publicly that he had either served with James Earl Ray, had in any way been involved in the case, we released that name." While I have already addressed this with regard to the prisoners Curtis and Billett-Buccelli, there is more.

145. In November 1977 the FBI presented me with a list of prisoners' names and asked me to limit my request with regard to them. I did this by marking the list. (Exhibit 18) Thereafter, the FBI replaced no records. It made no mention at all of the matter of the withheld names of prisoners. After a May 1978 calendar call, in the presence of Miss Ginsberg, I asked SA Beckwith about this. He told me with some heat that the FBI refused to provide anything until whatever he and the FBI regard as the end of this case.

146. Over a long period of time I had given the FBI proofs of exactly what SA Beckwith refers to, "that the individual had mentioned publicly that he had either served with James Earl Ray, had in any way been involved in the case ..." (This is not limited to prisoners. There remains withholding with regard to others "in any way involved in the case," as illustrated by Exhibit 3.)

147. In addition to these and other proofs, there is what the FBI has available in the indexes to the books previously referred to and in the consolidated index I gave the FBI and the Civil Division last November.

148. I cannot explain the basis for Miss Ginsberg's claim of "need" at page 18 of the transcript, but I can and I do state that I have done precisely what it is represented to this Court that I had not done: "What we need is exactly what Mr. Lesar began to tell us. If the names are deleted in document "X" are on the public record in a court case somewhere else, we need that information." In connection with this representation, I state again that the Department and the FBI also refused to accept my index to the evidentiary hearing transcripts. I have done this with regard to the guilty-plea hearing and other such matters.

149. At this point Mr. Lesar did inform the Court of the fact that I "repeatedly wrote the FBI about the deletions and the exemptions as they were being released. They were aware of them." I cite this colloquy to illustrate the futility

of the position in which I find myself from all these misrepresentations to the Court. The point here at issue was at issue in the earliest of the many calendar calls in this instant cause. There are repeated unfaithful representations about this to the Court by Department counsel. I have spent what for me is a great amount of time providing precisely that kind of information. There has never been a time in the entire history of this case when I did not offer or do precisely what the Department at this late date represents to this Court that I did not do. From the first I also offered to consult by phone. There came a time when in my presence Mr. Lesar told the Department its costs would be reduced if it bought a special WATS line to consult with me by phone on its withholdings.

150. My experience with official misrepresentations is not limited to this instant cause.

151. It is my experience that the withholdings in different cases are often interrelated. I illustrate this with an FBI record I have just received in another case. (See Exhibit 19 below).

152. Among the purposes served by these persisting misrepresentations to the Court in this instant cause is diverting attention from the broader aspects of noncompliance with the Items of my request.

153. One of these Items relates to information provided to other writers. Two of the listed other writers are Jim Bishop and Jeremiah O'Leary. In response the Department has stated that the FBI never helps other writers and never helped Jim Bishop or Jeremiah O'Leary.

154. According to the records just obtained in the other case (Exhibit 19), the actuality is that the FBI even arranged for free and luxurious accommodations for Mr. Bishop. It provided him with information. In return, he agreed to submit his manuscript to the FBI prior to publication of his book. Needless to say, Mr. Bishop's writing pleases the FBI.

155. Mr. O'Leary had similar deals with the FBI.

156. Records relating to Mr. O'Leary and Mr. Bishop are incidental in the MURKIN records. They also are incidental in records relating to the assassination of President Kennedy. There has been no search of the files in which all such records properly belong to comply with my request relating to information provided to other writers.

157. As I informed the Court early in this case, it is well known in

Washington thst the FBI's propaganda functions were administered by Cartha DeLoach and T. E. Bishop. I did ask the FBI to search records in or related to their offices. The FBI refused to do so. The names of Mr. DeLoach and Mr. Bishop appear regularly in records I have located relating to other writers and to providing information. Some of these records include the leaking of defamations allegedly picked up by electronic surveillances.

158. The way the FBI's clandestine self-propagandizing system works is illustrated by some of the records relating to Mr. O'Leary. Deniability is built into them. At virtually every point the FBI creates a false record that can always be retrieved to "protect the Bureau." But the fact is that, despite these false records, the FBI did leak and by other means did provide information to these other writers.

159. Exhibit 20 is a March 6, 1964, DeLoach memorandum that cites information given to the FBI by Mr. O'Leary and the Director's approval of giving Mr. O'Leary exclusive information in return. It is marked "Not Recorded."

160. Also "Not Recorded" is Exhibit 21, the M. A. Jones memorandum of May 3, 1968, to Mr. Bishop. This is one of a series of carefully worded records relating to the FBI's use of Mr. O'Leary and Readers Digest for propagandizing it and to its investigation of the King assassination. The concluding "recommendation," that the FBI give Mr. O'Leary what had already been published, is self-serving. Giving Mr. O'Leary what the library of his own newspaper held would be giving him nothing at all. Even so the notations all indicate that Mr. O'Leary was not helped by the FBI.

161. As the project developed, part of the FBI's own cover story is included in Exhibit 22, a Bishop to DeLoach memo of May 9, 1968. This states that Mr. O'Leary had made "an assiduous study of" readily available information and that "As the Director is aware, we have furnished no information to O'Leary ... other than contained in our press releases." (There had been a total of three press releases, hardly enough information for a rehash news story, leave alone a major magazine article.) In this record, which has other purposes, Mr. O'Leary is seen carrying the cover-up plot forward with a story that "will reflect that the FBI has been maintaining tight secrecy in the case" and was giving out no information at all. In fact, the FBI was leaking its head off throughout the entire hunt for James Earl Ray.

162. A Jones to Bishop memo of May 21, 1968 (Exhibit 23) makes out a case of how helpful the Readers Digest and O'Leary have been to the FBI in the past. It recommends help similar to that provided in the past again be provided by the FBI. This bears the Director's approval, "O.K. H."

163. By June 11, 1968, just a few days after Mr. Ray was captured, the FBI had reviewed and corrected the revised O'Leary manuscript (Exhibit 24). Through the same channels it sought the Director's approval with the same kind of self-serving language that concludes "The article is not attributable to the FBI." (Emphasis in original)

164. When the article appeared, James Earl Ray wrote the trial judge and stated that, if the judge could not prevent such prejudicial pretrial publicity, he, Ray, might as well walk over to the courtroom and be sentenced without the formality of a trial. Mr. Lesar and I obtained several copies of that intercepted registered letter in Memphis when we were exercising discovery prior to the 1974 evidentiary hearing. This Ray letter to the judge, like all those to and from his lawyers, was intercepted and copied. The FBI also was the beneficiary of this surveillance, as it has yet to admit in this instant cause.

165. When the FBI managed to get United Press International (UPI) to claim to have been responsible for the disclosure of the records I have obtained in this instant cause and in return UPI sent around the world the kind of articles the FBI likes, some records were embarrassing to Mr. O'Leary. No reporter wants it to be known that prior to publication he has submitted his writing to any official. The record used by UPI resulted in a story (Exhibit 25) that, as it appeared in the Washington Post of January 28, 1978, is headed "FBI Says It Had An Opportunity To Edit Article On Hunt For Ray." If there are more detailed accounts, I cannot present them to the Court because UPI has not responded to my inquiries and the FBI has not complied with my information request relating to its cozy deal with UPI. In its series of stories UPI is represented as having done the "assiduous digging" that resulted in the availability of these MURKIN records and the FBI is represented as having done a great job in its investigation of the assassination of Dr. King.

166. While claiming not to recall "having made an arrangement" Mr. O'Leary did not deny having given "prepublication editing privileges" to the FBI in return for the information it gave him. Mr. O'Leary is quoted as saying, "I would not have objected to the FBI's having these prepublication editing privileges). They gave

me most of the information."

167. This series of exhibits establishes that the FBI did provide information relating to the King assassination to other writers, despite its denial in this instant cause, and that to be able to make denial the FBI created false records to represent other than truthfully about its extensive propaganda activities.

168 These activities are no secret in Washington. The information I provided earlier to this Court on this point is virtually Washington folklore. It cannot be unknown to Department counsel.

169. The same kind of situation exists with regard to Gerold Frank, another writer listed in my information request Item. The FBI's liking of Mr. Frank is set forth in Exhibit 26. Mr. Frank obtained access to FBI records in Memphis. Details of the FBI's records are included in his book, An American Death. The "cover the Bureau" mechanism in Memphis gave Mr. Frank indirect access to FBI records through a prosecutor who is a graduate of the FBI academy.

170. (It is, of course, happenstance that Mr. Frank's exceptionally heavily promoted book appeared during the Ray habeas corpus efforts and that the vice president and general counsel of his publisher appeared as a surprise State witness during the evidentiary hearing.)

171. Exhibit 26 also shows that the FBI still wanted to do harm to Dr. King's widow, his organization and its then head a year after Dr. King was killed. The FBI planned to do this by leaking defamations. As Mr. DeLoach stated, "We can do this without any attribution to the FBI and without anyone knowing that the information came from a wiretap." (At that time, according to Book III of the Report of the Church committee, the FBI had been without any authorization for any such wiretapping for a year.)

172. There are Items of my request related to surveillances of all kinds. There has been no attesting to any search to comply with these Items. Exhibit 26 reflects that the FBI has its own means of denying what it has done, means by which it can avoid finding existing records and deny them to requesters and to courts.

173. With regard to Exhibit 26, I call to the attention of the Court how little time the vindictive FBI hierarchy lost. This DeLoach memo was written the very day James Earl Ray entered the guilty plea.

174. Mr. Ray sought relief from that plea as soon as he was out of Memphis. Then and since he has claimed the plea was coerced. The plea is consistent with Mr. Ray's forecast to the judge, that the prejudicial pretrial publcity begun in mass magazines with the FBI's operations with Readers Digest and Mr. O'Leary and through countless leaks to other writers, all protraying Mr. Ray as guilty, made his guilty plea inevitable.

175. I believe the FBI's vindictiveness, its participation in such improper activities as surveillances that extended to defense communications and its covert press campaign to convict Ray in the public mind all provide additional motive for the continuing withholdings in this instant cause and for its refusal to search those files it knows should be searched if it is to comply with my request and the Act.

176. For the Department to be aware of what is set forth in the preceding Paragraphs it did not require my assistance as its consultant. The kind of information contained in the preceding Paragraphs is not what the Department expected of the consultancy. My having informed the Department of the existence of these kinds of records, as I did months ago, has not led to any compliance with the relevant Items of the request.

177. As I have stated, the consultancy was at best a stalling device, a boondoggle and a means of preventing my doing other work. If there had been official good faith in the consultancy arrangement, the Department at the very least would first have done as Mr. Lesar and I asked, studied the FBI's own worksheets and my letters specifying the FBI's noncompliance. Instead, it asked me not to write it directly about such matters.

178. Persisting misrepresentations to this Court and renewed suggestions that we sit down and talk again have as their result further stonewalling, continuing noncompliance if not also making it permanent, and the continued withholding of what is embarrassing to the Department and the FBI. At my age and in my condition, the permanence can be real.

179. In informing the Court about the state of my health and the new limitations imposed upon me, I am not making what I regard as a special pleading in a case that has been in court for two and a half years, a case whose beginning is actually more than a decade in the past, a case in which noncompliance with the Act and with my rights was ordered, approved and implemented on the highest official

levels. Rather am I attempting to deal with reality when, after the history recounted in this and in prior affidavits and in live testimony, I again hear about sitting down and talking. No amount of sitting and talking in the past, no amount of writing and informing, has meant anything in terms of compliance.

180. It is a fact that I am 65 years of age. It is a fact that I still work a very long day every day of the week. It is a fact that the medical conditions reported to the Court do not contribute to longevity, can cause death and can, at an unpredictable moment, require surgery. My doctor informed me of a new contingency on June 30, 1978.

181. It is also a fact that if I manage to upset the actuarial tables I face further limitations on the work I will be able to do from cause about which to now I have not informed the Court because I have sought to avoid making what may be misconstrued as an emotional appeal.

182. My vision has been subnormal from birth. Surgery did not improve it. I also have cataracts on both eyes. While this has not yet impaired my ability to read, since the beginning of this case the clarity of my vision has decreased considerably. I now cannot recognize the features of the Court from the first row of spectator seats in the courtroom.

183. My circulatory impairments are serious. They do require prescribed exercising, including all the walking for which I can find time and of which I am capable. (My physical capability fluctuates. Even the weather can and does cause variations in it.) The recent hot weather and sweating from walking in it have led to a fungus infection in my feet. My doctor does not predict any secondary infection and he has prescribed treatment. But he also has informed me that if there is a secondary infection and this infection does not respond to the treatment, amputations are a not uncommon consequence.

184. All the official stonewalling with which I am confronted requires that I work a longer day than I should. In turn, this wearies me more and further reduces my physical capabilities. It has become an endless cycle in which already I now am able to work less than had been possible.

185. Despite all of this, to the degree human imperfection permits, I have undertaken to inform the Court and the Department and the FBI as accurately and as fully as was possible. If I were compelled to take more time than the great amount of time I have taken already to inform the Department and the FBI, as a

practical matter it simply is not possible for me to provide any other kind of information than I have already provided.

186. The FBI did not require this information of me. Its withholdings are not of an accidental nature. It ignored the order of this Court with regard to some withholdings. It has persisted in perpetuating withholdings it knew would be improper when it was making them. Neither the FBI nor any Departmental component can produce a single letter in which it asked more detailed information than I had provided. I have not received a single letter in which I have been told that what I had provided was in any way "incomprehensible," the misrepresentation made to this Court by Department counsel.

187. Based on the actualities of my life and on long and consistent experience, I state that there is no constructive end to be served by any more sitting and talking or any more letter-writing relating to noncompliance in this instant cause.

188. At no point in the long history of this case has there ever been voluntary compliance. Whenever I have received any records, whether or not those records were in compliance with my request, they were provided under compulsion or under the anticipation of compulsion. When compulsion was anticipated in 1976 with regard to the December 23, 1975, Items of the request, substitution of the FBIHQ MURKIN records was made. When in 1977 the Court indicated it would accept a Vaughn v. Rosen statement, the FBI immediately sought stipulations to avoid that. Once I accommodated the FBI and the Court, the FBI immediately violated the stipulations. In addition, it unilaterally rewrote the stipulations to assure the withholding of even more. When compulsion again appeared to be imminent later in 1977, the Civil Division initiated the stalling device of the consultancy. In this it did not eschew misrepresenting to the Court and misleading the Court about what could be expected from the arrangement. Now, when once again I have shown continuing noncompliance, once again I am asked to sit down and talk. Any such endeavor at this juncture is another means of wasting time and perpetuating noncompliance.

189. My work is critical of officialdom. My work deals with institutional failings. Bureaucracies are not known for their desire to correct their own flaws or to face the consequences of any flaws. Bureaucracies also have power. Bureaucrats use their power, especially against those they regard as "enemies." Those who expose any bureaucratic failings are enemies to bureaucrats. Rather than facing and benefitting from fair criticism, bureaucrats prefer to pretend that wrong is right.

In this instant cause, while it is styled otherwise, I face noncompliance and stonewalling to interfere with, delay or prevent my exposures of official acts, acts that require public examination.

190. My experience leaves no alternative to the belief that absent compulsion there will not be an end to the stalling and the misrepresentations by which compliance has been avoided. My work and part of my life will thereby continue to be wasted to deter the work on which I have been engaged.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 10th day of July 1978 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires 7/1/72

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND
George D. Basford