UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. U. S. DEPARTMENT OF JUSTICE, Defendant.	Civil Action 75-1996

AFFIDAVIT

My name is Harold Weisberg. I reside at Route 12, Frederick, Maryland. I am the plaintiff in this case.

1. I have read defendant's Motion for Partial Summary Judgment, mailed to my counsel on May 11, 1979, and its attachments.

2. Not mailing me a copy of the Motion, an arrangement I had with the Office of the United States Attorney in all cases, including this one, delayed my receipt of and response to this Motion. The Civil Division ended this arrangement. With every filing this wastes time and creates costs for me.

3. In this instance the delay of a week meant that the Motion reached me at a time when I am weaker than at any time but one in recent years because of a serious and potentially dangerous change in my medical condition.

4. For quite some time I have been living on an anticoagulant (Coumadin) which is better known as a poison. The therapeutic dosage I have required is much higher than usual. One of the known hazards is that it can cause internal hemorrhaging. I was warned by my doctors about the possibility and its hazard.

On the morning of Friday, April 20, I voided what looked like only blood. My doctor gave me injections over the weekend to stop the hemorrhaging. He also instructed me to take no more of the anticoagulant until after testing and then examination by a specialist, Dr. Charles A. Hufnagel, chief of surgery at Georgetown University Hospital. His first availability was the afternoon of May 2. It was interrupted by an operating room emergency which delayed completion

of the examination until after the end of the normal working day. Several new and sophisticated series of tests were made early that evening. The report to my local doctor was delayed. It reached him the afternoon of Friday, May 11, 1979. He immediately saw me and arranged for the additional testing recommended by Dr. Hufnagel. This entailed the availability of the radiological facilities at the only local hospital, which services the City of Frederick and a large and growing suburban and rural community. The examination, on Friday, May 18, consisted of injecting a radioactive dye into my veins and a series of before and after X-rays for a detailed examination of the kidneys from a number of different perspectives and at various focal distances. One purpose explained to me by my local doctor and the specialist was to determine whether an abnormality rather than the anticoagulant caused the internal hemorrhaging. On Saturday, May 19, I was told that no kidney abnormalities were detected and to resume taking the anticoagulant. By then a large, hard lump the size of an egg began to appear on my right arm at the point of injection. It is moderately painful and is still another disconcerting and distracting factor in my present life. There will also be regular interruptions for blood-testing for the doctor's information and as a means of establishing dosage of this dangerous medicine.

6. It was not possible for me to begin a study of the Motion prior to the time of these kidney examinations because it did not reach me until Thursday, May 17, which was when I was unwell and unsteady. What I can do one day I cannot do another day. Coexisting with my medical problems, which involve both the veins and the arteries, has been a cut-and-try business for which the doctors can make no advance predictions. I have been told to try to do what I can and learn from the effort. The results appear to be illogical and to a large degree they are unpredictable. Moderate exertion on Thursday morning was too much for me.

7. During the month that I have not had the benefit of the anticoagulant my capabilities have been further reduced, I tire more and more readily. My thighs, legs and feet are swollen. Yet I am required to wear tight special (venous gradient) supports which are designed for me. They are intended to deter the breaking loose of the blood clots that were detected in 1975 while also promoting the development of auxiliary blood circulation in the minor veins of

the legs and thighs. These swellings and constrictions add to my weariness.

8. I have also had a recurrence of a chronic lower back problem that originated in an accident in 1939. It is painful. Sometimes I cannot stand or walk erect. Sometimes I have difficulty getting out of a chair. It limits what I can do. I am not able to bend or squat, which is necessary in searching my files on this case and other files, those on which I would ordinarily draw in preparing this affidavit.

9. My wife cannot assist me in this because of her arthritic condition for which she is presently receiving treatment.

10. The circumstances referred to in the immediately preceding paragraphs make it impossible for me to follow my past practice with affidavits, consulting and attaching copies of records.

11. I prepare this affidavit from recollection. However, with more time, on request I will provide any records desired.

12. With regard to my prior affidavits and their many attachments, I do not recall a single instance of rebuttal by the Department. As is true in the present Motion, all the uncontested information I have provided under oath and subject to the penalties of false swearing is merely ignored by the Department, particularly by Department counsel.

13. It is my understanding that any Motion for Summary Judgment is inappropriate if there are any material facts in dispute.

14. To the knowledge of the FBI, the Department and Department counsel, material facts are in dispute, including what is alleged in the present Motion and its evasive, conclusory and long-withheld largely boilerplated affidavits.

15. Moreover, the affidavits do not justify Department counsel's representstion of them, even if all their representations are true, which they are not, as I show below.

16. The opening sentence of the Motion states what none of the affidavits even address, "... the issue of the thoroughness and scope of the defendant's search for records responsive to plaintiff's Freedom of Information Act Request." (emphasis added)

17. All the affidavits are limited to the Stipulations oa August 1977.

The main affidavit, that of Quinlan Shea, is careful to specify its limitation: "records described in paragraph 9 and Enclosure 3 of Mr. (Douglas) Mitchell's Affidavit as having been processed have in fact been processed pursuant to the stipulation of August 5, 1977. This conclusion of mine addresses only the fact of the processing, not the legal adquacy of the processing..."

18. Mr. Mitchell begins that paragraph of his affidavit with the admission there are some "exceptions." He follows with a further and massive limitation that still fails to state the full reality. His initial restriction is to records allegedly "processed pursuant to the stipulations..." His avoidance of the real situation is in "records not requested by plaintiff in his letter of September 17, 1977, were not processed." This does not state that the withheld records are not within the Stipulations. They are. This does not state that the records I did request on September 17, 1977, were provided. They were not. Mr. Mitchell makes no reference to other relevant requests that have not been met, as will become clear in following paragraphs.

19. In fact, I did make many requests for those withheld records in my cited letter. As of today they remain withheld.

20. In short, the cited language of the Motion represents to the Court what the alleged support of the Motion does not state. The language quoted from the Motion is not truthful. It is not truthful as related to my information request, which is not even the subject of the Motion's attached affidavits. It is not truthful as it relates to the Stipulations. The Motion misrepresents fact and its own attached affidavits.

21. From long and painful prior experience I believe these misrepresentations are not accidental. Official misrepresentation as is a practice and an abuse that has tainted this case from the outset.

22. In about September 1976 the Court reacted with what appeared to be shock and disbelief when I stated that there had been misrepresentation to it by the government, including by Department counsel, and that from my experience as long as misrepresentation was not ended this case would not end except with non-compliance, which I would not willingly accept.

23. After John Dugan resigned from the Office of the United States Attorney

and Civil Division provided the Department's counsel, misrepresentations by Department counsel became more subtle. They also became defamatory of me and my counsel.

24. I now have much personal familiarity with the use, which means hurtful misuse, of false records created by the Government, particularly by the FBI and the Department, for the clear purpose of defaming me. They are misused to undermine my credibility and to avoid the factual nature and accuracy of my work. The Department and the FBI have not been able to confront it, even in secret, by any other means. They have extended this once secret practice of authoritarian societies to the courts. Overt fabrications were provided to the White House and to others, including Attorneys General, their deputies and the Congress. I keep coming across misleading and defamatory records not provided in response to my Privacy Act request of 1975. They are mendacious. Where they are not totally false, they are deliberately distorted. In violation of the Privacy Act, many were included in FBI general releases that began in December 1977.

25. These have had and are intended to have an intimidating effect on all those who are made privy. They were provided to the Congress when it was investigating the FBI. They were provided to Tennessee authorities when I was defense investigator in the case of Ray v. Rose. The report on what use was made in Tennessee pursuant to the directive of FBIHQ remains withheld in this instant cause as well as under my PA request. The record that is the directive was provided in this instant cause.

26. My appeal in this instant cause remains without response. I do not recall that it was even acknowledged.

27. My appeal from denial of the records called for by my PA request has not been acted on in more than three years.

28. Some of these withheld records, specifically the Tennessee response referred to directly above, are relevant in this instant cause, are included within the Stipulation and remain withheld.

29. Another example is the most recent of many individual appeals I have filed as I come across such records provided in ~~this instant cause~~. It also is relevant in this instant cause because there is a surveillance Item of my actual

several cases

requests. What little response there has been in this instant cause is not under oath, is evasive and is intended to be misleading. Unsworn response is limited to what are called ELSURS. It is then limited to those ELSURS that are indexed. My request includes any and all forms of surveillance. This most recent appeal is based on an FBI record relating to the assassination of President Kennedy. To justify not even acknowledging my 1966 request for information, the FBI Laboratory stated that I had a personal association with a Soviet national in the Soviet Embassy.

30. In the World War II period I was a Washington correspondent. Later I was also in touch with the Soviet Embassy at the request of the State Department and the United States Information Agency. I have had no clandestine or personal contact with the Soviet Embassy or anyone employed there. (The fact is they stole every story idea on which I sought help and placed them with larger publications like Life magazine and the wire services.)

31. The opposite of the implication that I was some kind of Soviet agent is the actuality. During the period of what was called the Nazi-Soviet pact I was an unregistered British agent. Among the still withheld Departmental records that should have been provided in response to my PA requests are records relating to this, to the work I did, copies of which I also gave the Department of Justice, and a reflection of the fact that I rendered these services to the British because the Department asked it. Otherwise I could have been prosecuted.

32. My writing of that period also is directly opposed to the FBI's nasty implications. Among those who in those days praised my investigative reporting is the FBI Director J. Edgar Hoover. His letter has not been produced in response to my PA request. (It was published by the magazine for which I then worked, owned by Richard Nixon's friend, Walter Annenberg.)

33. It is obvious that whatever the FBI contorted into the false allegation that I had personal associations at the Soviet Embassy has to have as an innocent origin what was picked up on some kind of surveillance. That places it squarely within an Item of my requests in this instant cause. It remains withheld, contrary to the quoted opening language of the Motion, which claims compliance with my request.

34. Department counsel's extension of what I believe is the proper limit of the adversary system, adding personal slurs and making subtle implications at many calendar calls, parallels this FBI campaign of slander.

35. After I became aware of the effect of these secret efforts against me, my credibility and that of my work inside the Government, I also feared the possibility of subliminal effect on this Court. I feared this more because of their subtlety, because they were accompanied by misrepresentations of the actualities in this long case in which there is so very large a record and because I was aware of this Court's preoccupation with other large and time-consuming cases and its desire to bring this one to an end. While I had and have no concern over such considerations as bias or partiality, I did have concern over normal, human factors. We are all influenced by subtleties of which we often are not aware, especially by constant repetition of them. I therefore addressed these misrepresentations and slurs in an affidavit based on quotations from the record and gave it to my counsel.

36. I also believe that the Court should be made aware of misrepresentations, and I undertook to do that. Experience in my cases is that official misrepresentations impinge upon the Constitutional independence of the judiciary. Experience in this case is that the Court had been misled, for example, in accepting at face value Department counsel's assurances relating to the need for me to act as its consultant in my case against it and the other assurances then accepted in good faith by the Court and not since lived up to.

37. I have no reluctance in standing on the accuracy of that affidavit today. I am reluctant, particularly when I cannot pay him for the great amount of time and effort I know he has devoted to this case, to ask my counsel to consider investing other unpaid time in fending off any vengeance, including against any other client, which I believe could be a distinct possibility.

38. My counsel did not discuss this with me. He did not file the affidavit. Because it was apparent to me that from what he knew had been done to me he could see the possibility of serious retaliation against him as a member of the Bar, I did not argue with him or insist.

39. Present Department counsel has been promising this Motion for Partial Summary Judgment for many months. So did prior Department counsel. These repeated

promises that were not kept became still another means of stalling this case and thereby accomplishing the improper political purposes of which I earlier informed the Court.

40. This has been Department practice from the outset.- literally, from the very first calendar call of February 1976.

41. That there was deliberate delay in filing the present Motion is reflected by the dates on the FBI affidavits. All are brief, all could have been executed in 1977 and all are dated more than a half-year ago.

42. Mr. Shea's affidavit is of but four paragraphs. It, too, could have been executed last year.

43. The only attachment prepared for Mr. Mitchell's affidavit was completed last year (Attachment 3). I saw it by accident when I was in Mr. Shea's office on another matter. I either lifted it not to sit on it or to clear a place on which I could set a cup of coffee. This was six months or more ago. The time of preparation is not indicated on Attachment 3. The most recent date I recall from Mr. Mitchell's affidavit is of 10 months ago.

44. Using a pleading to cause delay violates the Federal Rules as interpreted by the present Attorney General and is opposed to Department policy as he stated both in his recent Law Day speech, a copy of a published excerpt from which was sent to me by mail. (Exhibit 1) The language he quoted is "The signature of an attorney constitutes a certification by him that he has read the pleading, that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay."

45. The foregoing Paragraphs of this affidavit establish long delay in the filing of the Motion. This affidavit also establishes that the belated Motion is not filed in good faith. With regard to the "information" possessed by the signatories to the Motion, I state that I have filed many long, detailed and abundantly documented affidavits uncontestedly proving the opposite of what this Motion represents. I have disputed under oath every affidavit filed by the Department and believe I proved their infidelity to fact.

46. Neither the "information" attached to it nor any other information of which I know supports the Motion. I believe it is interposed for still further delay.

47. The end of these long, contrived delays in filing the long-promised Motion just happens to coincide with public knowledge of the printing of all the King-Ray volumes by the former House Select Committee on Assassinations. My earlier representations to the Court that theAAct and I were being manipulated so that the FBI could manipulate the committee remain unrefuted. The evidence I provided elicited not even a pro forma denial. There is no reasonable question about the fact of this manipulation of the Congress and of what the media and the country can know. It is common FBI practice, made clear in many FBI records I have obtained and studied. It regularly manipulated Attorneys General.

48. These long and unnecessary delays have the added purpose I have also stated, of wasting some of what remains of my life and of preventing my writing, writing the FBI and Department do not like but on a factual basis have not been able to fault. While compliance with my PA request has been incomplete and the appeal has not been acted on after three years, PA records and records relating to the assassination of President Kennedy are explicit in stating that the FBI must "stop" my writing. This expression is actually used in several records.

49. Specifically, the FBI and the Department have not been able to fault my 1971 book on the King assassination and the Ray case. All relevant FBI records are still withheld. The FBI has and has examined this book. It has a special unit to study and report on such books and special files, not bearing the MURKIN designation for these reports and comments. (My actual request makes no mention of MURKIN.)

50. With several ongoing Congressional investigations, the Department and the FBI had motive for withholding and for delaying the filing of this Motion. The Court's setting of a calendar call coincided with the publication of the record of the House committee whose legal life ended with the last Congress. Only after notification of the calendar call was the Motion filed. Inevitably, this results in further delay. If the Motion is not scrupulously faithful to fact and is not at least a reasonable interpretation of the Stipulation, then it is another stalling and delaying device. I believe it is this and has this continuing intent.

51. Consistent with the above-quoted factual inaccuracy of the operative language of the Motion, which represents that it is

> on the issue of the thoroughness and scope of defendant's search for records responsive to plaintiff's Freedom of Information Act request

rather than being narrowly limited to the Stipulation of August 1977 only, is the

opening and untruthful representation of the Memorandum of Points and Authorities. There it is represented that my information request is of the FBI only:

> Plaintiff filed this Freedom of Information Act (FOIA) lawsuit ... in order to gain access to certain documents in the custody of the Federal Bureau of Investigation ...

Neither here nor elsewhere is there any reference to my actual requests or to the fact that they are not addressed to the FBI only. My actual requests include the records of all Departmental components.

52. I believe that in this additional misrepresentation to the Court Department counsel was aware that the representation is not truthful.

53. Nor is this suit for MURKIN records only. Yet the conclusion of the first sentence of the Memorandum represents that this suit is for the records of the "so-called MURKIN investigation" and those only. It is beyond doubt that Department counsel knows this is not a truthful representation.

54. The code name is not mentioned in any of my requests or in the complaint. It was unknown to me.

55. The purpose of this misrepresentation also is to perpetuate an earlier fraud upon the Court and upon me. I began calling this to the attention of the Court in 1976 when Department counsel succeeded in persuading the Court that the Department could and would comply with my information requests from FBIHQ MURKIN files only.

56. In following paragraphs I provide added specification of the nonaccidental nature of misrepresentations relating to my information requests and how compliance with them had been avoided to now.

57. The second and third paragraphs of the Memorandum bracket an inadequate and incomplete representation of what "Specifically, plaintiff sought" and "On August 5, 1977 the parties entered into a stipulation ..." The two are not identical. The Stipulation does not relate to the entire information request.

58. The Stipulation is limited. It also is predicated upon the meeting of certain specified preconditions which, as will be shown below, were not met. And it did not provide, in the words of the Memorandum (page 1), "photographs, and documents or reports made available to certain specified authors."

59. One of these specified authors is William Bradford Huie, or Hartselle,

Alabama. One of the field offices specified in the Stipulation is Birmingham. The Department, the FBI and the Birmingham Field Office have not provided me with all the described and other records relating to William Bradford Huie. As I also show below with citations from the Mitchell affidavit, photographs remain withheld and Birmingham records were withheld, then offered, then refused and remain withheld to this day.

60. The intent to mislead the Court is carried forward in the opening words of the second paragraph, which refer to "plaintiff's FOIA request, as refined by the August 1977 stipulation ..." (page 2).

61. There is not a single "plaintiff's FOIA request." My first requests were made in 1969. When AUSA Dugan sought to get the Court to hold that with the 1974 amending of the Act all prior requests were wiped out, the Court held otherwise, read those earlier requests, and interpreted them as seeking "all" information relating to the King assassination and its investigation. I also amended the Complaint to include additional requests. One of the Department's earlier means of stonewalling and delaying was to refuse to address the amended Complaint and those specific Items, even when the Court urged it.

62. The Stipulation does not "refine" the request. There was no change in my request or in the information sought. Rather was the Stipulation for entirely different purposes. Appreciation of what is sought by the misrepresentations of the Motion requires an explanation of them and their context.

63. The situation was that there was little compliance with the Items in the Complaint, none with the Items of the amended Complaint, none with my 1969 requests, and Department counsel insisted it was impossible to process any Items in the amended Complaint, even those also within the 1969 requests. When I proved that later requests of other requesters had been processed, this made no difference. It was almost two years before there was any compliance with the Items of the amended Complaint. There were unjustified withholdings from the records initially provided without any claim to any exemption made or specified. Even nonexempt material was removed from the relatively few records provided on the later claim that the obliterated information related to amended Complaint Items. The withholdings from records initially provided included FBI names.

64. In about June of 1976 the Court first stated that such names might not be withheld and then issued a verbal Order that they not be withheld, directing Department counsel to contest the Order or comply with it. My first recollection of this dates it to the calendar call of June 10, 1976.

65. Department counsel did not brief or contest the Order. The Department merely ignored it. This Order was before the substitution of MURKIN records for my actual request and before the processing of any MURKIN records began. Yet throughout the first two-thirds of the MURKIN records and in other historical cases to this very day the FBI withheld and still withholds such names.

66. To me refusal to comply with an Order of the Court is contempt. When the FBI dared behave contemptuously, when Department counsel supported this contempt and when I was able to obtain no relief from it or any other kind of correction of improper processing on appeal and when the Court was patient with the Department and the FBI with regard to such matters, an enormous amount of my time was wasted and noncompliance was perpetuated.

67. My counsel had earlier filed a Vaughn v. Rosen motion on which the Court had not ruled. When he referred to this at calendar calls, the Court suggested that we try to work out problems. In accord with the desires of the Court, my counsel and I made numerous efforts to do this. I made trips to Washington for this purpose when it was difficult and tiring for me and wasted more of my time. We met with the FBI following several calendar calls. I provided it with countless copies of improperly processed records. I wrote innumerable detailed memoranda and letters, full of specifications and sometimes with additional copies of improperly processed records and other proofs. Through it all the FBI stonewalled, supported by Department counsel, and my appeals were not acted upon.

68. Violations of the Act and the Order and other expressions of the Court often extended to the withholding of the public domain.

69. Meanwhile, when total stonewalling could not be perpetuated, when the Court began to push Department counsel for a beginning of compliance, the Department, after ignoring my information requests for almost a decade, suddenly found that the case was historical, requiring maximum possible disclosure. That such maximum disclosure would result is the assurance to the Court by AUSA Dugan.

70. What the belated historical case determination really meant is that all other writers would get free access to the records it required so much time and effort for me to break loose while I faced still other delays because the Department claimed that processing historical case records required even more time.

71. Because of my subject-matter expertise, described as unique by the Department, this historical case determination and what the Court of Appeals stated in its No. 75-2021 imposed added public responsibilities on me I had to meet even when they were opposed to self-interest and my own desires relating to the work I wanted to do.

72. With records of no interest to me I was forced to seek compliance and proper processing to avoid making permanent an Orwellian rewriting of their content and meaning and so that the records available in the future, when I will not be alive, not be misleading, confusing, conducive to misinterpretation or misuse and that withholdings not lead to injury to the innocent.

73. In an effort to try to work out problems, as the Court desired, I did meet with the FBI, even when I was weak and ill, almost not able to walk. On one occasion following a calendar call it was necessary for SA John Hartingh to arrange to park my counsel's car inside the FBI building because I was able to walk so little.

74. Despite all these efforts and all the time they required, there was no accomplishment. The FBI met and talked so it could not be accused of refusing to do so, but it provided no added compliance. It made promises it did not keep. It promised, for example, to reprocess all records admittedly processed improperly during the Operation Onslaught period and I believed it would keep this promise. SA Hartingh told me in response to my appeals that the FBI should not be using Exemption (b)(2) and I took this to mean that improper claim would end.

75. All of this was prior to the Stipulation.

76. I did not seek the Stipulation. It came about in this manner during the summer of 1977, when I was ill and weaker than I can remember ever being:

77. The Court indicated it might require a Vaughn v. Rosen inventory of the FBI.

78. Earlier my counsel had explained to me what this entails and how much

more work it means for all parties. He told me in particular the burden it would mean for the Court, how great an amount of work it would impose in addition to the Court's regular load. He explained that this Court already had several of the more complicated and time-consuming FOIA cases which had already been taxing.

79. I was well aware of the costs to my counsel and of his enormous efforts for which I could not pay him. I had personal knowledge that his great amount of work as defense counsel in Ray v. Rose was uncompensated because Ray was a pauper. I was the (also unpaid) investigator in that case from the time of the habeas corpus petition through the evidentiary hearing. During the time frame of this instant cause the sixth circuit court of appeals ordered my counsel to carry Ray's case to the Supreme Court. It did not provide him with counsel fees or the cash costs. So also I wanted to save what time I could for my counsel in this instant cause.

80. Once this Court indicated it would direct the FBI to prepare a Vaughn v. Rosen inventory, SA Hartingh took the initiative in seeking stipulations in order to avoid this.

81. By that time I was so weak I did not dare risk a trip to Washington by the limited and inadequate public transportation.

82. My health had deteriorated to the point where I was sent to the aforementioned Dr. Hufnagel, a renowned expert in circulatory disorders. He was not able to see me until August 1, 1977. He then diagnosed the arterial impairments I had come to suffer in addition to the preexisting extensive ones in the venous systems of both legs and thighs.

83. I was not able to participate in the discussions of the provisions of the stipulations SA Hartingh proposed except when my counsel discussed them with me by phone.

84. Contrary to the representations of the Motion, the Stipulation is of narrow scope and purpose. In addition, it was predicated on prior assurances from the FBI. These included the promised reprocessing of those FBIHQ MURKIN records referred to above and the assurance that all relevant field office records were filed as MURKIN records and that this designation was necessary for proper identification of them in the Stipulation.

85. In following paragraphs I address the actual provisions of the Stipulation. Of the many reflections of the fact that the Department and Department counsel then did not interpret the Stipulation as they now do, one that is within the personal knowledge of the Court is the matter of imposing the Civil Division consultancy on me. This was in November 1977, after claimed compliance with the Stipulation. There was no need for Department counsel to persuade the Court to have me act as the Division's consultant and do all that work if it then believed the Stipulation meant what it is now claimed to mean. Instead, Department counsel then would have filed the present Motion.

86. (Not only have I not been paid for all that work - I have had no response to all those specifications of noncompliance and I have not received a single record or a single replacement record that I recall as a result of all the proofs I provided.)

87. Leading the Court to have me become Department counsel's consultant in my case against the Department was intended as another means of delaying and frustrating compliance and wasting more of what remained of my life.

88. Rather than relating to "the issue of thoroughness and scope of defendant's seach for (all) records responsive to" my information requests, the Stipulation is limited to a compromise of records of eight FBI field offices only. This is stated in the Stipulation.

89. With regard to one of these field offices, Memphis, the Department had already filed an untruthful affidavit attesting that I had received all its relevant records.

90. In addition to the verbal assurances based on which I agreed to discuss stipulations, I insisted on a commitment to observe all provisions, otherwise the Stipulation would be null and void. This commitment is in the Stipulation. It is not mentioned in the Motion.

91. One provision was to protect me against dumping more records on me than I could examine prior to the receipt of the next batch. My counsel had already raised this in court because it had already caused me serious problems and had become another means of getting away with noncompliance and improper and unjustified withholdings. That records were to be provided in manageable segments is reflected

in this language of the Stipulation: "releases of documents and accompanying worksheets will be made periodically as they are processed." (emphasis added)

92. This condition was violated at the outset. I immediately notified the FBI in writing that it had violated the Stipulation.

93. My health had improved enough for me to travel a little. However, I was not able to make what is normally a one-day trip in a single day. It required several days for me to meet an undertaking with a midwestern college. When I returned I found that the FBI had accumulated more than 6,000 pages of Memphis records and waited until the very last day permitted by the Stipulation to send all of them in a single carton, the largest and heaviest I have ever received from the FBI. The manner of mailing would have permitted the rural carrier to deposit it at the base of my mailbox, which is not even visible from my home, and thus expose it to the elements and to theft or vandalism. Instead, he took it to my home and placed it on the kitchen floor where my wife had to avoid it for several days.

94. Moving it was, as without any question the FBI knew it would be, beyond my physical capacity. When I opened the box, there was no list or inventory. The volumes were not arranged in any order. They were packed helter-skelter. In moving them from the kitchen floor, I made separate piles of the different unidentified file numbers and then wrote the FBI to get an inventory. Awaiting its arrival further delayed examination of those records. That letter includes my denunciation of the Stipulation as violated. It led to one of the few phone calls to me from the FBI. SA Hartingh asked, "Are you still mad at us?"

95. This was more than deliberate violation of the Stipulation. It was an intentional abuse of an aging and ill requester, with the obvious intent of impeding my work and limiting the examination I could make prior to the shipping of the next batch of records. It did have these effects. (I also gave the FBI and the Department written specifications of failure to abide with other provisions of the Stipulation and of extensive improper withholdings.)

96. This violation is confirmed on page 2 of the Memorandum. It states not that the records were provided in manageable segments as processed but that "The materials from the Memphis Field Office were released to plaintiff on October 1,

1977; those from the other seven field offices were released on November 1, 1977."

97. The FBIHQ Martin Wood affidavit dates the beginning of the processing in July 1977.

98. The Stipulation also required that "all exemptions will only be assessed in strict conformance with the May 5, 1977, guidelines of Attorney General Griffin Bell relating to the Freedom of Information Act, and the provisions of the Freedom of Information Act itself."

99. Both of these provisions were violated extensively. I notified the FBI immediately. Specifications appear throughout my consultancy memo, in many pages I wrote to both the FBI and Civil Division and in my appeals. There is no affidavit claiming compliance with these provisions. Mr. Shea states his affidavit does not do this.

100. The closest thing to any denial is the affidavit of SA Horace P. Beckwith, which I proved was falsely sworn. It was provided after the Court directed response to a memorandum for the Civil Division prepared by a student who made a selection of the allegations of improper withholdings I had provided the FBI in writing. The Court expressed displeasure over the Beckwith affidavit but it has never been replaced and my proof of its falsity remains unquestioned. I displayed to the Court two large volumes of records relating to the Somersett-Milteer matter that had been provided to another and later requester. No copies of any of these pages have since been provided. No pages have been provided to replace the few provided earlier with withholdings proven to be unjustified. I had appealed the denials and I also testified to having filed a separate Somersett-Milteer request. There has been no compliance since my 1976 testimony in this instant cause.

101. This student's memorandum was prepared after the Stipulation and at the request of the Civil Division. This also is obviously inconsistent with the present interpretation of the Stipulation.

102. The matter of the student's memorandum and the Beckwith affidavit also proves violation of the Stipulation from not complying with the exemptions of the Act and the Attorney General's guidelines of May 5, 1977.

103. Another illustration is the testimony of Quinlan J. Shea, director of appeals. A careful reading of Mr. Shea's actual words discloses that he did inform the Court that from his review ~~the records~~ records provided were not properly processed. He also testified that he found the use of (b)(2) to be unjustified and unnecessary.

Extensive use was made of (b)(2) in the processing of the records that were provided under the Stipulation.

104. As I state above, it is not true that the Stipulation relates to all of my information requests or to any component other than the FBI. Itiis a misrepresentation to state, as the Motion does state, that compliance with the Stipulation permits "summary judgment on the issue of thoroughness and scope of defendant's search for records responsive to plaintiff's ... request." The limited purpose of the Stipulation and the sole ostensible and expressed purpose for which the FBI sought it is explicit. There is no reference to scope or to compliance with my request in the Stipulation and none is even implied. Rather does the Stipulation state fifst that "upon defendant's performance of these commitments," the preconditions in part referred to above, all I would do and all I agreed to is not to press the Vaughn v. Rosen motion: "plaintiff will forego completely the filing of the said motion." The language relating to what I would forego - upon compliance with the Stipulation is limited and specific: "plaintiff will hold in abeyance filing a motion to require a Vaughn V. Rosen showing with respect to the foregoing FBI files" and only these specified FBI files. There is no reference to any other files that are within my information requests or to any other component.

105. Moreover, the deception practiced to lead me to consider and agree to the Stipulation now is a petard on which the FBI and the Department have hoisted themselves.

106. The only FBI records covered by the Stipulation, aside from those relating to the Memphis sanitation workers strike and the Invaders, are those designated MURKIN. The only references to specific files are on the first page. These are "that processing of the FBI ... MURKIN file (sic) is undertaken immediately" and that there will be "processing of the MURKIN files from the FBI field offices in," followed by the cities.

107. No other files are referred to and there is no mention of the Department except in its assumption of responsibility for compliance with the Stipulation, "in consideration of the foregoing commitment by the FBI and the Department ..."

108. Other requirements of the Stipulation were not met. As I have already

informed the Court under oath, even some of the worksheets were phony. I provided copies that show a difference of 27 pages in the processing of a single record between the FBIHQ and Atlanta worksheets. Atlanta is included in the Stipulation.

109. The Motion is based on the Stipulation. To appear to give the Motion credibility, the Motion represents that the Stipulation means more and other than it does. To make it appear that the Stipulation has been complied with, the Motion represents that it has been complied with. In ostensible support of the claim to compliance with the Stipulation, affidavits are provided. Examination of the affidavits, however, discloses that they do not establish compliance with the provisions of the Stipulation.

110. As soon as I observed violation of the Stipulation on examining the first records provided under it, I notified the FBI. Later I informed the Civil Division and the appeals office of these violations. My prompt notification also had the intent of making the FBI aware and enabling it to comply with its own Stipulation. Instead, the FBI ignored my specifications and persisted in the same violations.

111. After the FBI persisted in processing the records covered by the Stipulation in violation of its provisions, which also means in violation of the provisions of the Act, it claimed the right to have the cake it had eaten. It took the position it has maintained from the first, that after it had processed the records in violation of the Act it would not process the records in compliance with the Act because of the cost. The deliberateness of this is reflected by its refusal to accept a consolidated index to the published works on the subject. It then proceeded to withhold what was in the public domain.

112. The affidavits now provided do not actually attest to or prove compliance with all the provisions of the Stipulation or with my requests. The field office affidavits claim little more than sending some = not all = MURKIN records to FBIHQ, That the FBIHQ search was deliberately inadequate is reflected in the description of it in the Memorandum (page 2):

> In response to plaintiff's FOIA request, as refined by the August 1977 stipulation, the FBI retrieved from the FBI central records system files captioned MURKIN; Invaders; Memphis Sanitation Workers Strike; Committee to Investigate Assassinations; James Earl Ray; Judge Preston Battle; and James H. Lesar.

The only other reference to files searched (page 9) is to the FBI's "ELSUR index."

113. The FBI and the Department knew and I also notified it and the Court that compliance was impossible if limited to the FBI's MURKIN files and its "ELSUR index." In addition, the Motion does not even claim to have conducted a search to locate records responsive to most of the Items of my request.

114. If all ELSURs were included in the so-called ELSUR index, which they are not, ELSUR is not mentioned in my actual requests. My requests include all forms of surveillance, by anyone at any time and/or place or means. When I was first given this nonexplanation of noncompliance, I corrected it in writing, immediately. Instead of complying or even responding the Department now presents the identical misrepresentation to the Court.

115. Searches of FBIHQ records were completed prior to the Stipulation. Searches in and compliance from FBIHQ records are not included in the Stipulation. The apparent purpose of dragging this in is to mislead the Court into believing first that there was compliance with my requests by FBIHQ, which is not true, and second that there is a waiver with regard to FBIHQ compliance in the Stipulation, which also is not true. There also is the suggestion that my FBIHQ requests were complied with. They have not been.

116. Untruthfulness extends to the description of the field office searches. The Motion states "The mode of search in the field offices was as follows. Each field office searched its general index to retrieve all records and/or exhibits relating to Dr. King's assassination and/or to specific events, organizations or individuals ..." This untruth is not relieved but is magnified by inclusion of "as required by the August 1977 stipulation and plaintiff's FOIA request." (emphasis added) The untruthfulness of this representation is already established in the record in my prior affidavits, to which the FBI's own documents are attached. There was no search of any field office records "as required by ... plaintiff's FOIA request." Instead, there was a directive limiting all searches to the MURKIN designation only. This was accompanied by a draft affidavit incorporating that and other limitation on the searches. There are countless illustrations of refusal to search for records relating to "specific events, organizations or individuals" when the existence of these records was established by FBIHQ records.

I do not recall a single instance of any response or any compliance. The Court should recall the Milteer-Somersett (Atlanta office) matter on which I have provided an affidavit. Other illustrations follow in this affidavit in relation to specific matters in the affidavits provided with the Motion. My 250 pages of consultancy memo abound in still other illustrations.

117. The actual nature of the searches and their limitations were known to the Department if not from any other source from my prior affidavit to which I attached copies of records I obtained from the New Orleans Field Office under my PA request. These include the "priority" round-robin teletype to the field offices included in the Stipulation. It is explicit in limiting the searches first to MURKIN and then still more within MURKIN: "... conduct a search of your indices for all main files identifiable with MURKIN" and "bulky exhibits and 1-A." Searches were additionally limited by specified "criteria."

118. This, a follow-up airtel and a boilerplate draft affidavit all told the field offices that the affidavit of compliance need not be made of first-person knowledge. It is obvious that those who were to make the searches not yet made could provide first-person affidavits.

119. Comparison of the present Anderson affidavit with the one he provided in August 1977 indicates that they are line-for-line identical. Such affidavits did not delay the filing of the long-delayed Motion.

120. Anderson makes no mention of compliance with my requests, to the searching of any other indices or any files other than MURKIN. He states that the search he did not make personally was "for all records and exhibits pertaining to the assassination ... and filed ... 'MURKIN.'" As used in the Memorandum (page 2) his limitation of MURKIN files is omitted and what he did not attest to is added, that besides searching for assassination records there was a search relating "to specific events, organizations, or individuals." With regard to the scope and nature of the search and with regard to my request the Anderson affidavit neither states what the Memorandum states nor supports it.

121. I cannot provide illustrations like the foregoing with regard to all other field offices because the responses I received from them under PA were incomplete and evasive as well as untruthful. Memphis, for example, which at the very

least had copies of the slurring FBIHQ records sent for its use with Tennessee authorities, evaded this with a response that says only that it had not conducted any investigation of me personally. This reply is not responsive to my request. (New Orleans did not check all its files under my PA request. Some of its records it did not provide have come into my possession by other means.)

122. Other evasions, equivocations and noncompliances are involved in the use of language like "substantive" relating to notations on field office copies not provided. Among the notations commonly on field office copies that do not appear on FBIHQ copies are those relating to indexing, other files, files on other persons, other file identification and distribution. I have found as many as 150 such notations on a single Memphis record. On one that slipped through the censors, a copy of which I sent to Mr. Shea, there is direction for indexing outside the "general indices." My actual requests include all indices. If Memphis had provided FBIHQ with a copy of any case index the existence of which is indicated above it would not be as easy for FBIHQ to have stonewalled me and the Court as it has and it could not feign ignorance to make all the many unnecessary and unjustified obliterations of what was known to be within the public domain.

123. Following less than faithful use of the field office affidavits, the Memorandum uses the Douglas Mitchell affidavit in like fashion (pages 3 and 4). Here reference to inventories and inventories checked is particularly incomplete and misleading. The Mitchell affidavit itself is incomplete.

124. There were not fewer than three such inventories. Identification of two of the three originated with me, not the Department or the FBI. (The one I did not identify is the one related to the Stipulation.) There may have been more inventories in connection with other Congressional investigations. Only one Congressional investigation is mentioned in these three. Mitchell knew about it because I gave his office the record disclosing it. That record was not provided to me in this instant cause. Mitchell's affidavit and the Memorandum make no mention of it.

125. The first mentioned inventory relates to one of the semi-regular internal so-called investigations of the FBI in December 1975. Never intending to really expose itself, the FBI sent a circumscribed directive to each field

office asking for an inventory of its records relating to Dr. King and of its MURKIN records. Without possibility of doubt, this is a MURKIN record. With the exception of a single field office, Chicago, where the memory-hole experts (aka Records Management Division) slipped up, all were filed outside the MURKIN files or are still withheld from the FBIHQ MURKIN records provided.

126. When I showed a copy to the FBI and asked for all the other inventories I was told a straight-out lie, that this was a single case, not duplicated by other field offices. As the Mitchell affidavit also does not state, my appeal has not been acted on. My specific requests began about the end of 1976 or early 1977.

127. There is reference to the King field office inventories and to other relevant FBIHQ communications, all still withheld, in a subsequent similar FBIHQ directive preparatory to providing records to the House Select Committee on Assassinations. It is this pair of records, the directive and the response, that I found in the Dallas files (89-43, 9952, 9958) provided in response to my request for all Dallas JFK assassination records (C.A. 70-0322). I gave copies to Mr. Shea. (As a measure of the dependability of attestation to the completeness of New Orleans searches in this case, the same directive was sent to New Orleans and all other field offices. To this day all copies remain withheld. That JFK case is C.A. 78-0420. Those appeals also have not been acted upon.)

128. There were other Congressional investigations for which the FBI was required to prepare. The Church committee, for example, is code-named "SENSTUDY" by the FBI. At FBIHQ its file number is 62-116395. The assassins committee is 62-117298. There are a number of other such investigations, all requiring the searching and copying of FBI records. Not a single such inventory from any MURKIN files, HQ or field, has been provided. Yet all the requests from FBIHQ for King assassination inventories are captioned "MURKIN." (This, actually, directs the field offices to limit their searches to what is under that caption, thus avoiding relevant records having other captions.)

129. The Memorandum and the Mitchell affidavit both acknowledge the December 1975 MURKIN inventory. But neither acknowledges the withholding of all copies and related records by all the field offices included in the Stipulation. Those records are not "previously processed" at FBIHQ and are captioned MURKIN, the files

required to have been searched by the Stipulation. By simple omission the Memorandum and the Mitchell affidavit avoid this proof of noncompliance.

130. It is because of the astounding extent of previously unknown and unacknowledged Kennedy assassination records in the Office of Origin or Dallas inventory that I made repeated requests for and appeals from the denial of the similar records of the King assassination Office of Origin, those of Memphis. They remain withheld.

131. In Dallas the largest of the special case indices is of 40 linear feet. There is also a communication index. There are previously unknown files on books and their authors. These and other records exactly duplicate items of my King requests that remain without compliance.

132. Aside from the special FBI political purposes some of these records were designed to serve, purposes duplicated in the King case, others are essential in keeping control over a vast and important investigation. While the Motion seeks to argue that merely because I say records "must" exist, as often a subject expert is able to state with accuracy, the Dallas case reflects both the need and the practice. And while records substantiating my representations were withheld zealously, as I state above, there was a slip-up and I did obtain a Memphis record bearing instructions for case rather than general indexing.

133. All of this and more that is relevant are omitted in the Mitchell affidavit and the Motion. All except the few records disclosed by inadvertence remain withheld. All the FBI affidavits supposedly attesting to compliance with the Stipulation have the same omissions.

134. The field office inventories relating to the Stipulation also are withheld under my PA request, which was sent to every FBI field office. No copies of any inventory are attached to the Mitchell affidavit. I therefore have no way of knowing whether they, too, can provide a subject expert with additional leads to still withheld records. That they remain withheld is reason to believe this is not impossible.

135. I illustrate this possibility with another omission in the Mitchell description. The FBIHQ orders for inventories disclose that FBIHQ lacks precise knowledge of what the field offices have and do not have by way of fruits of

surveillance. This is an Item of my request. FBIHQ is diligent in keeping itself in a deniability position with regard to domestic intelligence surveillances. I have the record in which it bawled out Atlanta for daring to send a surveillance tape recording to FBIHQ.

136. The Chicago and Dallas inventories list file titles and numbers. With all deference due the Motion I believe this "must" mean that all other inventories hold the same information because FBIHQ asked for it. Hundreds of withheld records "must" be involved. (Fifty-nine field offices multiplied by the number of inventories. This one Chicago King inventory is of 17 pages. It discloses a domestic intelligence operation of previously unimaginable magnitude and scope.)

137. With regard to the foregoing paragraphs, my request also asks for the results of all investigations. Inventories are the beginnings of those investigations. On this additional basis I believe the inventories are within my requests.

138. The Motion refers to the failure of the field offices included in the Stipulation to forward "certain files," otherwise not described, "to FBIHQ because they contained investigatory reports known to have been previously filed in FBIHQ." (top of page 3) However, there now are many FBIHQ records claimed to be missing. There is no affirmation that these "certain files" do not contain duplicates of any missing records. If, as is not uncommon, the field office copies have notations, they are to have been provided under the Stipulation.

139. Among the admitted omissions under the Stipulation are "Certain items of tangible evidence ... which could not be reproduced were not sent from the field offices." (Memorandum, bottom of page 2) "Which could not be reproduced" is hardly a description of what is mostly photographs, printed matter and various records as itemized in Mitchell Enclosure 1 and it is entirely nondescriptive of what I asked for on this one of many occasions (Mitchell Enclosure 2) when I was without income and my 1976 request for a waiver of costs had not been acted upon. I requested nothing "which could not be reproduced" easily and normally. To date, as nothing the Department presents the Court acknowledges, its withholding is perpetuated, This, of course, is diametrically opposite the Department's representations to the Court.

140. There is further reference to "tangible" materials like photographs

and printed matter and documents that for some reason not explained in the Memorandum the field offices appear to have believed would strain the vaunted scientific capabilities of FBIHQ. These materials are admittedly within the Stipulation and admittedly were not copied. From the Memorandum (page 4, beginning at line 8) the Court has no independent means of perceiving actuality. As the Memorandum states, the FBI wrote me on September 14, 1977 (Mitchell Enclosure 1) providing a list of the withheld materials within the Stipulation; and "plaintiff responded by letter dated September 17" (Mitchell Enclosure 2), which is to say by return mail. What the Memorandum fails to tell the Court is that my response was to request itemized records. The Memorandum also fails to inform the Court that the FBI complied. This is not an oversight. The FBI has not complied and my appeal has not been acted on. Particulars follow where the Mitchell affidavit is addressed.

141. Neither the Oliver Patterson matter nor the Long Tickler are within the Stipulation. The purpose for including them within the Memorandum is not stated. I believe this purpose is to mislead the Court into believing that the FBI is generous in responding to my requests and that I am somehow greedy or unappreciative, neither of which is true. If the Department believes it should call these matters to the attention of the Court, I believe it should do so fully and in context, as it does not do.

142. First of all, there has not been compliance. Patterson is not the only such case and my appeals have not been acted upon.

143. Patterson and one Richard Geppert were FBI political informers who penetrated the legal defenses of James Earl Ray and John Ray for the FBI. Both are self-disclosed. It is no longer secret that they were FBI informers. The FBI has insisted to this Court and others that it never discloses the identifications of its informers. At the same time it has failed to deny the proofs of a prior affidavit in which I showed exactly how it contrived to disclose Patterson to the House assassins committee and forced him to become its informer over his written objections. The clear purpose with both Patterson and Geppert was to manipulate the House committee. These and other FBI adventures in influencing events succeeded. Clearly, there was no law enforcement purpose.

144. I provided Department counsel with a tape recording of Geppert's TV

confession to establish that he is self-disclosed as an FBI informer, appealed the continued withholding of the relevant records and my appeal has not been acted on.

145. These are not the only informers either identified in this instant cause or turned over to the House committee by the FBI. I provided an uncontested affidavit relating to Birmingham informant Morris Davis, who wound up turned over to Mark Lane by the House committee. Marjorie Fetters shared her bed with brother Jerry Ray.

146. There is no issue of disclosure relating to these informers. There is withheld information relating to all, I have appealed the withholdings and my appeals have had no response. The withheld information should be in the files of at least three field offices listed in the Stipulation: Birmingham, Chicago and St. Louis. (Deceased informer Willie Somersett of Beckwith affidavit fame is included in the records of the Stipulation field office, Atlanta, among others.)

147. It is not true that "the so-called 'Long Tickler File,' also requested by plaintiff, was released to him on November 20, 1978." (Memorandum, page 4) I regard this as a serious matter and a serious misrepresentation.

148. If the Court had been told that some of what remains of the gutter Long Tickler was belatedly provided, this would have been true but still incomplete. Also withheld from the Court is the fact that this appeal, too, has not been acted upon.

149. Beginning in 1976 it became apparent from FBIHQ MURKIN records alone that an enormous number of these records were routed extensively throughout FBIHQ. These records include the identifications of Divisions and of many of the higher and supervisory personnel. One of the names often added was "Long."

150. Once I observed this I made repeated verbal and written requests for a search of the ESC div. sional files and those kept by supervisors. SA Hartingh and others assured me that there were no such other files, that the only records kept are in Central Records. When I questioned the purpose of all the other file cabinets I saw throughout the J. Edgar Hoover FBI Building as I walked to the rooms on the upper floors in which we conferred, he claimed they were exclusively for temporary filing, that all records were sent to Central Records or were destroyed. The other FBI personnel, including OLC SA Charles Matthews and FOIA SA Ralph Harp, support

supported SA Hartingh's representations. Thereafter all our conferences I can recall were only on the first floor near the reception desk at about the center of the main Pennsylvania Avenue entrance.

151. Within the past month I found a JFK assassination record that constitutes proof that the Divisions do in fact have separate files and their own filing personnel. I have provided a copy to Mr. Shea as part of an appeal.

152. I learned from the public materials of a Congressional investigation that not less than 25 percent of FBIHQ records do not reach Central Files. I received nothing in response when I informed the FBI, I believe again Mr. Hartingh.

153. Later I learned that Supervisor Long was still assigned to FBIHQ and that FBI FOIA personnel had not bothered to ask him what happened to those hundreds of King assassination records routed to him.

154. The Divisions involved in my requests, as I now recall them, include General Investigative, Domestic Intelligence and External Affairs, the euphemism for propaganda activities and relatively infrequent press releases. (Other Divisions were heavily involved.) I asked in particular about the files of the Director and his closer associates and in particular about the Civil Rights Unit because the King Assassination was carried as a civil rights case.

155. Faced with the denial of the existence of these records, including those that were directed to "Long," I could do nothing but appeal, which I did. Finally I did find a reference to the FBI's "Long Tickler." This was not in any of the more than 50,000 pages of FBI records I read. In all of them I recall no reference to the Long Tickler, It was in an Office of Professional Responsibility record. According to this OPR record the Long Tickler was the control file on the case, broken down into subfiles by some three dozen subjects. That the existence of so large and important a record could be successfully hidden by the FBI while it did release some 50,000 pages is a tribute to its political foresight, the diligence in assuring nondisclosure of nonexempt records by its FBI personnel and, of course, FBI and Department scruple in informing this Court only honestly in saying that they could and would comply in this instant cause from FBIHQ MURKIN files only. (My first request was for records said to prove Ray's guilt. The Long Tickler as the control file was probably the most relevant single record. That request was of

FOIA

1969, a decade ago.)

156. Diligence in searching and processing records in this instant cause finds another tribute in those 50,000 pages. I do not recall seeing in them a single routing or memo slip such as I recently learned were used regularly in records relating to the JFK assassination. These routing slips designate copies of records for a number of purposes. One is for inclusion in tickler files. FBI ticklers are so common they are included on printed forms. Such a slip, from FBI practice, should have been attached to every record routed to Supervisor Long. All copies were and remain withheld (Within the past month I sent Mr. Shea samples of these forms.)

157. Based on this OPR record I renewed my appeal. Mr. Shea still was told there was no such record as the Long Tickler. When he followed leads I provided, he found where it was hidden and where the FBI knew it was, in the Congressional Liaison unit.

158. Consistent with not informing the Court about the foregoing relating to the Long Tickler is telling the Court no more and no less than "Furthermore, the so-called 'Long Tickler File,' also requested by plaintiff, was released to him on November 20, 1978." This holds no reference to extensive withholding from what was released, which is not "the so-called 'Long Tickler File.'" It holds no reference to my appeal. to failure to act upon my appeal, or to refusal to provide other records the existence of which is now disclosed.

159. After I detected what had happened, I asked for an inquiry into it because I believe the Court should be informed; otherwise, the Act is meaningless when an agency wants to withhold a nonexempt record. I have had no response, apparently because the Department fears the FBI.

160. When I examined what was not still withheld of the little that remained of the original Long Tickler, it became apparent that this is not the record described by the OPR record. In this regard I emphasize that the OPR record was created after my request, which means, as other evidence also indicates, that the original Long Tickler existed at the time of my request and until some point in this litigation. Only then, during this litigation, was the original record destroyed. Unauthorized destruction of any such record is prohibited by FBI regulations. Mr.

Shea has found no record of authorization for this destructing being sought or granted. I believe the destruction of what may well have been the most important single case record during litigation is contemptuous.

161. Among the apparent reasons for the destruction of the Long Tickler is the fact that it would have proven that when the FBI gave this Court assurance it could and would comply fully with my requests for the FBIHQ file the FBI knew it was giving false assurances. I cite as an example a document not destroyed, apparently from fear the House assassins committee would use it. (It did, as the foundation of its Ray case.) This document relates to members of the Ray family and their imagined careers of successful bank robberies from which they emerged impoverished. It is the contrived explanation of how James Earl Ray allegedly was financed during the year between his escape from jail and the King assassination. This also is the document disclosing that the FBI has me filed in not fewer than five bank robbery files in not fewer than three places and did not provide any of these records under my PA request or earlier in this instant cause. It is the document I stated had to originate in some telephone intrusion. (This appeal also has not been acted upon. Other records do exist.)

162. From long experience at catching federal agencies in other than truthful representations in FOIA matters and in deliberate noncompliance, I do not expect the heaping of ashes, the rending of garments or the tearing out of hair in contrition. Nor do I expect confessions. What is unusual, even in the Orwellian world of the FBI and FOIA, is the attempted use of the Long Tickler as relevant to the Stipulation when it is not and simultaneously, while avoiding all else that is relevant, proclaiming noncompliance as compliance and the destruction of the record as proof of "thorough" search. In this the importance attributed to the Long Tickler is that of the final authority prior to summation:

> Defendant submits, therefore, that it has thoroughly searched its files and that it has retrieved and processed for release to plaintiff all records relevant to plaintiff's FOIA request as refinded by the August 5, 1977, stipulation.

163. Were all of this true, as it is not, it fails to state that what allegedly was "processed" has been provided. It has not been. (The Act requires access and the Stipulation requires "release.) Illustrations are cited in connection with the Enclosure to the Mitchell affidavit which itemizes what admittedly was withheld.

164. If ever there was a doublegoodspeak, it is "refinement" for the destruction of a record during FOIA litigation in which it is relevant.

165. Consistent with closing the Memorandum without stating that all relevant records were provided is opening the Argument with the identical omission: "The sole remaining question, therefore, is whether the quality or thoroughness of the searches conducted by the FBI comports with the requirements of the" FOIA.

166. This again represents the Stipulation as involving the entire matter, "sole question" and "plaintiff's FOIA request." This seeks to extend a Motion for Partial Summary Judgment into a Motion for Summary Judgment on all matters. There is no other basis for misrepresenting the scope of the Stipulation, which is limited to compliance from MURKIN records only and from some field office files only, then relating to a waiver of a Vaughn v. Rosen inventory by the FBI only.

167. Tuchinsky is cited to argue that "The FOIA was not intended to impose an unreasonable burden on agencies, nor to require them to collect a 'mass of information'." I did not ask for all of the MURKIN records. I filed requests specifying the information I desire. The "mass of information," most of which is absolute junk and a paper monument to the FBI's dedication to the irrelevant as a substitute for investigating the crime, was forced upon me when I was hard put to pay the copying costs. I did not make the historical case determination, which requires maximum possible disclosure of all records and imposed additional public responsibilities on me. These decisions, both of which victimized me and have been used to effectively deny me most of the information I seek, account for the "mass of information" I had to pay for and read instead of reading records responsive to my actual requests and personal interests. This "argument" charges the victim of the rape as an attractive nuisance.

168. The next "argument" is that "the agency muse use 'a reasonable effort' to locate records within a given category, but not unreasonably burden itself to collect a mass of information to satisfy a request." What this argument really does is characterize the historical case determination as a trick to avoid disclosure. Complying with its own historical case determination is "unreasonably burdensome" for the Department. I have to tell the FBI where its files are hidden and "unreasonably burden" it, not me. Merely xeroxing the already disclosed Somersett-Milteer records is to "unreasonably burden" the FBI in what becomes an unsworn substitute for a false affidavit.

169. This "argument" is also intended to enable continued avoidance of searches in unsearched files of Orwellian titles and uses. That kind of filing is intended to prefabricate withholding to avoid embarrassment for the FBI and the Department that defends its misconduct. In this instant cause the Court, my counsel and I have been criticized for daring to expose and oppose falsely sworn representations, proving them false, and providing actual records along with the phony copies substituted for them. (Both contradictory versions bear the initials of the FBI's affiant, then an unindicted co-conspirator who escaped punishment by squealing on others who participated in illegal acts that are described as upholding the law.) In this case I have found some of the memory holes, with press the Long Tickler and other such records. In more newly released JFK assassination records I have found and called to Mr. Shea's attention other files knowingly and deliberately used to hide information so it would not be retrieved in the normal search. This accounts for the emphasis on allegedly normal practice in each and every one of the FBI's affidavits. Secret investigations of those the FBI does not like, like Jim Garrison, are hidden in 100 or "Internal Security" files along with me and 80 or "Laboratory Research Matters" files. (There has been no search in the 100 files on Dr. King. At FBIHQ it is 100-106670.) There is special use of 67 or "personnel files" for files on a Garrison lieutenant, a New Orleans policeman, not an FBI employee. Records essential in any investigation of the fact that the FBI suppressed all knowledge of Oswald's visit to its Dallas office and his leaving an allegedly threatening note also are kept in an FBIHQ 67 file and are not in the proper file with the rest of the results of the FBI's investigation of itself. Relevant to the Items in my request relating to information provided to other writers is a special 94 "Research Matters" file. With it "Research" appears to mean under-the-table and untraceable leaks. Other bizarre filings on me include under bank robberies, "treason," and when I was suing the Government, not seeking employment, I was filed as a candidate for Government employment, no doubt to hide the impropriety of that investigation. It did not begin with Daniel Schorr.

170. The FBI does not use such filings to lose records. It hides them this way. Nobody would ever suspect "80. Laboratory Research Matters" translates into "enemy list." Nobody would ever ask that it be searched for enemy list - relevant

records. The FBI that filed records this way can retrieve them easily the same way. If it does not "unreasonably burden itself" to be able to violate the Act, it will not "unreasonably burden itself" in reversing motion through its many memory holes. (The claim on page 7, that "an agency is not required to reorganize" its files in response to a request may not betoken Department counsel's awareness of the immediately foregoing, but it is not otherwise applicable to the realities of this instant cause and the searches made and not made.)

171. "Argument" continues with citation from Goland (I believe the wrong Goland) decision, that "Congress instructed the courts to accord 'substantial weight' to agency affidavits. In this case the argument is that this Court should "accord substantial weight" to conclusory, incomplete and false affidavits. My prior affidavits alleging false swearing by FBI SAs and others in this instant cause have not been rebutted, even addressed by the FBI. In addition to the previously cited Beckwith affidavit also related to the nature and scope of the search are affirmations by the previous supervisor, SA Thomas Wiseman. He swore that a search of the FBI "central index" yielded no indication of any pictures of the scene of the crime and that never was there any suspect other than Ray. In fact, that index yielded records in which the FBI boasted of identifying some 400 suspects in a couple of weeks and the exact location of not fewer than three different sets of pictures of the scene of the crime.

172. I do not address the arguments as matters of law. I do address what is not stated but is implied, that as matters of fact they are relevant in this instant cause. They are not. There has never been any allegation that my requests were not comprehended or were not for reasonably identifiable records. Compliance does not require any reorganization of the FBI's or the Department's filing systems. Compliance requires only a good-faith search. That is not even claimed at any point. The words are not used. Consistent with this the Argument and all else ignore the specifics of noncompliance I have provided, ranging from proofs that withholdings were not justified to the identifications of the locations of records for which no search had been made. There is no reference to the historical case determination, which as a matter of fact and practice alters the standards and requires maximum disclosure and greater effort to locate records. There is no reference to the

Attorney General's guidelines of May 5, 1977, compliance with which is a precondition of the Stipulation. Conspicuously absent is any reference to any of these matters in the Shea affidavit. He comes as close as a Department employee dare come to stating the precise opposite, as will be enlarged upon below relating to the affidavits. And although not one of the attached affidavits really addresses my actual requests and only one pretends to by mere reference, the Argument concludes that

> Defendant's affidavits clearly and beyond any reasonable doubt establish that the FBI has conducted a thorough and complete search of its files, as defined (sic) by plaintiff's request and the stipulation. Defendant has comprehensively searched both the index to its Central Records System and its ELSUR index, retrieving, processing, and releasing (sic) to plaintiff the non-exempt portions of the files identified thereby. To do more would require an unreasonably burdensome page-by-page reveew of each document in each file maintained by the FBI ...

173. The "page-by-page" fabrication comes from CIA affidavits I proved to be false. I assume this is among the reasons there is no FBI affidavit so stating when 10 affidavits are attached to the Motion. Other reasons are set forth throughout this and my prior affidavits. This statement is already proven false.

174. Examination of the actual affidavits gives no support to these sweeping claims made for them.

175. The tightrope-walking Shea affidavit says no such thing. It is of extraordinary narrowness and is limited to a single citation of the Mitchell affidavit, which also says no such thing and in turn is limited to what he says the FBI told him is relevant to the Stipulation. (Moreover, this citation is to a portion of the Mitchell affidavit that is in factual error.) After carefully and narrowly limiting himself, Mr. Shea states of the little he has not eliminated and does refer to that he does not address the "legal adequacy of the processing" or "the matter of the so-called 'previously processed' records."

176. Mr. Shea does not even state that a single record was released under the Stipulation or that a single page was processed properly. He draws his line at stating his belief that some "records have been processed pursuant to the stipulation." In refusing to address "the matter of the 'previously processed' records," he in fact is refusing to address <u>most of the records covered by the Stipulation</u>. Most were withheld on this claim. There is not even a pretense of accounting for them except with regard to Memphis files. They are ignored in the other worksheets, to the best of my recollection.

177. Neither the Shea nor the Mitchell affidavit refers to my appeals, to their large number of detailed specifications or to failure to act on them. One of the appeals not acted on is "the so-called 'previously processed'" matter.

178. Mr. Mitchell's affidavit states that "Since September 1976, I have been directly responsible for the supervision of the administrative appeals growing out of the Freedom of Information Act request of Mr. Harold Weisberg for access to Federal Bureau of Investigation (F.B.I.) records pertaining to the assassination of Dr. Martin Luther King, Jr." (paragraph 2) This misstates my request exactly as the Motion does. My request is for all Departmental information, not merely that of the FBI. For the one "directly responsible for" these appeals, Mr. Mitchell's affidavit is deficient, if its purpose is to inform the Court fully and honestly, in not stating what appeals relate to the Stipulation and whether or not they have been acted upon. But if he were here to inform the Court that there are relevant appeals and that in going on two years they have not been acted upon, there would be no basis for what is sought in the Motion. It is argued (as on page 9) that all releasable records have been provided to me. On the administrative level, for this to be true, there must be administrative decision on the release of the appealed withholdings. This is not attested to, it has not happened, and Mr. Shea specifically disavowed it.

179. Mr. Mitchell provides a list of what the FBI told him it reviewed. He does not represent making any search for other relevant files and he does not state there are none or that he has any way of knowing whether or not there are. This makes a rubber-stamp of the appeals mechanism. It also makes a rubber-stamp affidavit. If the FBI has other relevant files and has not searched them, Mr. Mitchell's affidavit has the effect of wiping them out. At several points Mr. Mitchell states what the FBI told him, which is not personal knowledge. The secondhand nature of his representations on scope and completeness (page 3) is:

> Messrs. Hartingh and Harp stated to me that <u>these were all the records they believed were required to be processed</u> under the terms of the stipulation agreement ... (emphasis added)

(No affidavit from either is provided. SA Hartingh initiated the Stipulation.)

180. These are the same gentlemen who violated this Court's Order not to withhold FBI names, as Mr. Mitchell knows from that appeal, also not acted upon.

If this were not case I know of no reason to take the FBI's word on its searches when it provides false assurances to courts, not underlings. I illustrate this with Exhibit 2, an uncontested affidavit I filed in another cause. It relates to the identical questions of FBI assurances and the scope of its search.

181. By Order of the Court in C.A. 77-2155 the FBI was directed to provide me with copies of what it described as 11 FBIHQ records relating to the assassination of President Kennedy. The FBI sent me the records and wrote me that it had complied. A year later and only after the district court record was closed in the case in which I filed Exhibit 2, the FBI came up with about 15,000 additional pages. These are relevant in several cases in which the FBI provided courts with assurances that are invalidated by the existence and disclosure of these 15,000 pages.

182. It is the same FOIA unit of the FBI that, after insisting a thorough search reflected neither pictures of the scene of the crime nor other suspects, did not even bother to withdraw or apologize for its false assurances in pthis case. Instead, it provided still new false assurances, that all relevant records were in FBIHQ Central Files. When I proved by cross-examination of the FBI's own witnesses that most of its records are in the field offices, it led to no compliance from any field office files. It wrote me a letter over the Director's signature stating that there was nothing of interest to me in its Memphis files, which I later had to prove was its major case repository. Little as the FBI's sworn word is worth, its unsworn word is worth less.

183. Mr. Mitchell states that he concluded, based on a spot check, that the records provided "had been processed in substantial compliance with applicable law and Departmental policies." (paragraph 4) This also can leave substantial noncompliance. For example, if three-quarters is "substantial," it means one-quarter noncompliance. In terms of pages and withholdings, one-quarter of the pages provided is more than 10,000 pages. Either means "substantial" noncompliance.

184. If one checks what Mr. Mitchell states, as for example Paragraph 5 referring back to Paragraph 2, it still boils down to he knows what the FBI lets him know or tells him. When he is limited to spot-checking and that without subject-matter knowledge, he is without means of knowing whether all the files were sent to Washington or whether within any file the records are incomplete.

By way of illustration I have not received any notes made by the agents of the Office of Origin in their investigatons and interviews and I have not received copies of some of the more important typed reports. It is standard FBI practice to search files on case principals and it is a necessity. There is a special FBi form on which requests for these searches are made. Memphis has not provided its MURKIN files searches slips. (I have provided Mr. Shea with a sample of this form, one I obtained in C.A. 78-0420.) In addition to reflecting a continuing intent to withhold relevant information, withholding these slips withholds the identifications of the files shown by the office index to hold records relating to case principals.

185. If all the Memphis agents and file clerks had photographic memories and total recall, they would still require some notes. I have paraphrases of reports where the reports themselves have not been provided. These are all MURKIN records and within the Stipulation.

186. There is only one alleged eyewitness, Charles Quitman Stephens. Actually, he was drunk, saw nothing and the FBI knew it. Allegedly he saw a man two hours before the crime. He is represented as saying later that this man was Ray. In truth, on or about April 18, 1968, the FBI showed him a photograph of Ray. He was firm in making negative identification. His approximate words are, "That's not the guy." Despite this the FBI and the Civil Rights Division both later took affidavits from him in which he is represented as making identification of Ray. One of those affidavits was used in the extradition.

187. No notes used as the basis of any Stephens affidavit have been provided. A paraphrased alleged summary of an investigative report is used in a summary report but the investigative report is withheld. In the paraphrased summary, rather than saying Stephens said the man he saw was not Ray, which would have eliminated even the wobbliest eyewitness, the FBI quotes him merely as not making positive identification of Ray.

188. If this withheld information is provided, it will be proof that the Stephens affidavit, prepared and used by the Department, was not truthful and that those who prepared the affidavit knew it.

189. In Paragraph 8 Mr. Mitchell actually admits that as of the time he executed the affidavit all the records offered in Enclosure 1 and asked for in

Enclosure 2 had not been provided to me. He states they had been processed and would be provided. More than a month later I have not received them. Moreover, he resorts to an evasion in saying no more than that FBIHQ had "processed" the records I requested. They did not deliver all. He concludes this Paragraph by saying I can request again, which is hardly proof of past compliance or conformity with the Stipulation.

190. This Motion was filed without my even being notified that there would be additional partial compliance by now providing me with what is admittedly within the Stipulation and admittedly withheld. This is the real meaning of Mr. Mitchell's Paragraph 8. It is a conditional affidavit in which Mr. Mitchell repeats FBI promises of compliance that even with a Motion before this Court have not been kept.

191. In order not to further lengthen an affidavit that is already longer than any party desires, I provide illustrations of continued withholding of copies of records Mr. Mitchell states have been processed.where motive for withholding can be perceived by a subject expert.

192. In the FBI's 1977 list of items allegedly not copied because of "the nature of these items and the impracticality of doing so," Birmingham, the second office listed, illustrates what is "impractical," copying printed records! Three items only are listed, all of this nature. In Enclosure 2 I requested all three. Each of these items is entirely suitable for copying on normal letter-sized paper. All remain withheld.

193. Two of these records are catalogues, for the "Redfield Scope" and the rifle and ammunition allegedly used in the crime. Both are giveaways, used to sell what the manufacturer makes. Now the "explanation" for denial is that these cannot be copied. When I asked for them after it was admitted that they had been withheld and they were offered, the FBI, supported by the Department, made a different spurious claim, to copyright. One of the two giveaways is not even copyrighted. Further, as is without dispute, I have filed prior affidavits attesting that in this instant cause the FBI has given me thousands of copies of copyrighted material.

194. I do not know the real reason for withholding copies of these giveaways.

I state what I believe: they reflect unfavorably on the FBI's investigation and tend to discredit its beliefs about the crime and its solution.

195. When the FBI offered and then refused these giveaways, I went to a local gunshop and examined its file copy of the catalogue for the variable scope. Its specifications include settings by number for the distance from the target. The apparent reason for withholding this catalogue is to hide the fact that at the time it was found the scope was set at the opposite or wrong end of its range for the distance to Dr. King. This means that anyone using that scope would have seen a blur, not a sharp image. This suggests that the rifle was not used in the crime. There is no known proof that it was. The FBI presumed its use. It has provided no tangible evidence to support its presumption. I have asked for it.

196. There is a parallel with the catalogue for the rifle and ammunition. The rifle is equipped with a clip for rapid, automatic feeding of additional bullets into firing position. In the official story Ray paid a premium for a rifle designed to fire repeatedly only not to make use of this feature by not having a full clip behind the single bullet he allegedly fired. The rifle had only a single empty shell in it when found. It did not have a clip with additional bullets. But there were plenty of loose bullets in the bundle of odds and ends of stuff found on the street. In addition, the manufacturer gives specifications for the ammunition, along with a photograph of a fired bullet, to boast that it is the greatest "mushroom" of all hunting ammunition. This means and the picture shows that the forepart of the bullet expands on impact to become more lethal while the afterpart is designed to remain intact. The FBI's identification photographs of the fatal bullet (it claims it took no others, none to illuminate expert testimony) bear a close resemblance to the manufacturer's boastful picture. This indicates that the bullet could be expected to behave as in fact it did behave. The FBI, after examining the fatal bullet, said it could not make a ballistics match with the rifle. As defense investigator in Ray v. Rose, I obtained the services of an acknowledged expert previously unknown to me. I took him to the office of the clerk of the court where he made a proper and scientific examination of the fatal bullet and made a series of close-up photographs for use in later testimony. The conclusion to which he testified is that given the rifle and the fatal bullet,

after firing and recovering test bullets and comparing them with the specimen, he could state whether or not that rifle fired the fatal bullet. I

197. In this instant cause the FBI has not provided me with records relating to any test-firing of the so-called fatal rifle. The setting of the scope, without any explanation of the maaning of the setting, is in an FBI record made after receipt of the rifle.

198. Other Birmingham office records not provided relate to William Bradford Huie, who lives in Hartselle, Alabama. Records relating to him are pertinent to the Items of my request relating to writers.

199. Enclosures 1 and 2 include many withheld photographs and my requests for them. I illustrate with the case and photograph of J. C. Hardin. Records on him involve not fewer than three of the field offices included in the Stipulation, Atlanta, New Orleans and Los Angeles. I asked repeatedly for the still withheld relevant records,and this photograph. There has been no response and no action on repeated appeals.

200. J. C. Hardin is the name of an FBI Atlanta informant. While Ray was in Los Angeles, on the lam and just before the assassination, he received several phone calls from a J. C. Hardin, who gave the hotel clerk Atlanta and New Orleans phone numbers at which Ray could reach him. Later he turned up at Ray's Los Angeles hotel in person. Aside from those near whom Ray resided, Hardin is the one person known to have been in contact with Ray just before Ray left on the trip he was on when Dr. King was killed. The Atlanta office sent the Los Angeles office a picture of J. C. Hardin. It was offered and then denied. It and all other Hardin information I requested remain withheld. No copy of any Hardin photograph appears in Enclosure 1 under Atlanta or New Orleans.

201. Mr. Mitchell may have preferred taking the word of the FBI whose compliance he supposedly was checking rather than consulting the files of his own office. If he had read only part of the second paragraph of one Hardin appeal dated December 3, 1978, he would have had reason to do more checking if not for having doubts about what the FBI told him. In that appeal I referred to Newspaper stories alleging there had been no contact between Ray and any agent or informant of the FBI. I reminded Mr. Shea of the "continued withholdings relating to J. C.

Hardin" and told him this is the name of an FBI informant. The date of this one of several Hardin appeals I cite is at least a year and a half after my taking this up with the FBI in writing, probably longer. I do not recall the date of my first specific Hardin appeal. I do have a clear recollection of writing SA Hartingh about the matter and of discussing it with him much earlier, as soon as I saw the first Hardin reference. (I regret not being able to search files but at this point in drafting this affidavit, with my wife already retyping the earlier portions, I am more limited in what I may do. I have just been informed by my doctor that, as a result of the most recent tests, I have suffered new damage to the veins in my right arm. This is the reason he avoids all "invasive" tests to the degree possible.)

202. The first office listed in Mr. Mitchell's Enclosure 1 is the Washington office. There is knowing and deliberate withholding of relevant records in its files. I have appealed this repeatedly to the FBI and the appeals office. Mr. Shea has a special way of referring to it. From the FBI's source I have some of the FBI's records. I had a long discussion of this with SA Hartingh and some of his associates. I have provided enormously more information than is required for identification of the withheld records. When I first told Mr. Hartingh the story he told me that the FBI office involved would have been Richmond. I corrected him and told him that normally it would have been Alexandria. He then acknowledged this. (Both are outside the Stipulation.) I also told him that, despite the fact that normally this would have been an Alexandria case, in fact it was a Washington case and I gave him the name of an agent involved. As I recall it is Todd.

203. While I have no reluctance in providing the Court and Department counsel with as much of the story as I know, given the pervasiveness of irresponsible conspiracy theorizing in the field of political assassinations, I am reluctant for what I know to become public because serious harm can result. I therefore restrict myself to general statements here and offer to provide the rest in camera or any other nonpublic manner.

204. By happenstance, someone tape-recorded a man who confessed to advance knowledge of the killing of Dr. King and by whom it would be done. This person used a name I believe is an alias. I provided the FBI with a name I believe could be the correct name from MURKIN records I received. I asked for the other records

on that person so I could determine whether or not he is the person who made the confession when he was very troubled and very drunk. The FBI has not complied. This person described himself as one who was in Memphis just before the assassination in connection with the events that led to the assassination. I made inquiry of his then associates. They did not make any denial. Instead, they referred me to the FBI and they sent a copy of my letter and their lawyer's response to the FBI.

205. Threats against prominent persons are legion. For example, although Somersett-Milteer records pertain to both the Kennedy and King assassinations, I do not believe that there was any direct connection with either crime. I desire those records for other purposes, including historical. Many other such threats are known but only one person fired a fatal bullet.

206. On this subject the Department has acknowledged my expertise. I have done considerable work and have had access to those to whom the FBI has not had access. I do not begin needing to coexist with an official preconception and I had no official master with whose beliefs my work had to conform. Based on my work, I have reason to believe that the confession from the troubled drunken stupor requires the serious consideration no FBI records not still withheld reflect.

207. Those who provided my information earlier provided the same information to the FBI. This includes a copy of the tape and a professional transcript of it. They got in touch with me only after they feared the FBI would do nothing with that information. And they, of course, saw the person who confessed at the time of his anguished confession. After I saw them the FBI returned and questioned them again.

208. The FBI has not made any claim to any exemption to withhold. It merely stonewalls and does nothing. There is no real privacy question because of what has been disclosed. There obviously is no legitimate (7)(D) claim.

209. For reasons I do not state, this can be an area of extreme delicacy to the FBI in the sense of cause for embarrassment to it. I am anxious that there be no unfairness to the FBI over this, another reason for caution.

210. I believe this information required an investigation that extended outside the territory of the Washington office, including Memphis and other areas. The records <u>are</u> MURKIN records and are so filed at FBIHQ. The Washington office

is an office included in the Stipulation. The records therefore are relevant to the present matter but are not referred to in the Motion or any attachments.

211. I have read the FBI's boilerplated affidavits. With a single exception not one is by a person who claims to have made the searches. No explanation is provided for the affidavits not being by those who personally made the searches.

212. The FBIHQ affidavit is by SA Martin Wood. FBIHQ records are not included in the searches specified in the Stipulation. He claims no first-person knowledge of anything else. SAs Hartingh, Harp and others have personal knowledge. SA Wood does not at any point or in any manner state or even suggest that the FBIHQ records he lists are all the records responsive to my requests and they are not.

213. The Clifford H. Anderson-New Orleans affidavit, addressed above and in prior affidavits, states that New Orleans did withhold records and did not forward them to FBIHQ. He does not state why these were withheld. All can be xeroxed. He does not claim any exemption for any of the items listed as not sent to FBIHQQ He does not state that any is not within the Stipulation and in fact all are. Neither he nor any other SA attests to the providing of copies.

214. This is true also of the Kenneth A. Jacobson-Los Angeles affidavit. It admits to the withholding of a two-page list of records included in the Stipulation. The closest thing to an explanation is his special interpretation of "document" to exclude such items as copies of drivers' licenses and photographs. All listed withheld items are within the Stipulation.

215. The Northcutt-St. Louis affidavit has no list of withheld records attached. St. Louis needed none. It accomplished its withholdings by tricky filings. As I have previously stated, I was to receive all St. Louis and Chicago records relating in any way to the Ray family. The only ostensible FBI interest in the Ray family is in connection with the King assassination. I therefore accepted the assurances of the FBI that all such records were in the MURKIN files. Since the Stipulation I have obtained copies of FBI St. Louis Ray family records I do not recall seeing earlier. One source is Mrs. Carol Pepper, the Ray sister, who filed a request. The other is my counsel, who was given them by the House assassins committee. (On Mrs. Pepper's copies the FBI even withheld page numbers!)

216. That there were relevant records not provided is obvious from two matters that are public and have been before the Court in this instant cause. One is the allegedly misfiled Byers matter, which the FBI used exactly as I informed the Court, to gull and misdirect the House committee. The other is records relating to the former informer, Oliver Patterson. He was used by the FBI in a successful effort to penetrate the legal defenses of two Rays, James and John, as those records ~~still~~ not withheld establish.

217. The intent to deceive my counsel and me on this is obvious. The FBI first assured us that all relevant records were in the MURKIN file, where they belong, and then that it had them filed elsewhere and thus are not within MURKIN. (I cannot provide the file numbers from Mrs. Pepper's set because the FBI obliterated them.)

218. FBIHQ used the identical trickery with regard to the Patterson records. Some clearly are MURKIN records but the FBI excluded them from any MURKIN filing.

219. I believe that if the FBI had provided copies of the Patterson and the still withheld similar records relating to Richard Geppert the outcome of the case of Ray v. Rose might have been different and John Ray might not have been sent to jail for 18 years on the charge of driving a "switch" car for a man acquitted of robbing a bank. My initial request was long before Ray v. Rose or the trial of John Ray.

220. I do not know why the FBI engages in tricky filing but I believe it includes assuring that in a search limited to MURKIN records it would not disclose the exculpatory in two prosecutions in which it had intense interest and so that evidence of the suborning of perjury would not be retrieved in a search of the seemingly appropriate records. (I have provided relevant details in prior affidavits, including in reference to one Clarence Haynes, now clearly and publicly established as having committed perjury.)

221. Why the FBI boilerplates and limits its affidavits is illustrated by what happened with the slight departure from boilerplating required by the Office of Origin affidavit, provided by SA Burl F. Johnson. In his departure from the boilerplate his language does not limit the alleged search to MURKIN records. He does refer to MURKIN, but only as the FBI's code name for the assassination. What

he actually states is that he "caused a search to be made ... for all records and exhibits, the main subject of which were investigations concerning the assassination" of Dr. King. He does not state "and designated MURKIN."

222. All such records are within my requests. No records relating to the King assassination were provided by the Memphis office except from its MURKIN file. SA Johnson's words are records relating to "investigations concerning the assassination." I can tick off long lists of investigations all the results of which have not been provided. The Stephens case cited above illustrates this. (I recall not "See" records being provided, either.)

223. Historical case standards presented no problems to SA Edwin A. Waite in his Washington field office affidavit. It is straight boilerplate and is limited to MURKIN. But without claim to any exemption he adds admission of these withholdings, of two identified money orders and an unidentified "Tape recording received May 28, 1974." If as is possible this is the tape recording to which I refer in Paragraphs 202ff. above, this establishes MURKIN filing of it. As stated above, relevant records remain withheld.

224. The William L. Deaton-Chicago affidavit, also boilerplated, concludes with a list of records admittedly not sent to Washington. He claims no exemption. He represents instead that photographs and an envelope holding photographs, constituting all but two of his listed items, are not "documents." What I state about Ray family records and the St. Louis office also applies to the Chicago office. Among the MURKIN investigations conducted by and with the Chicago office the results of which remain withheld is one relating to a person not in Chicago who wrote Ray there, at an address not generally known, immediately after Ray's escape from jail in 1967. This parallels the Hardin withholding of the following spring.

225. These FBI affidavits are almost entirely boilerplated; almost entirely not made on first-person knowledge when those of first-person knowledge are available; are conclusory; do not even claim compliance or due diligence in good-faith searches; and neither say nor mean what is attributed to them in defendant's Motion, Memorandum of Points and Authorities and Argument. In fact, they itemize records within the Stipulation that were not provided at the time of search and

processing, were not provided subsequently and remain withheld this long after the time provisions of the Stipulation and my prompt appeals.

226. I believe that not providing copies of all known records within the Stipulation and within its time provisions is another violation of the Stipulation and under its provisions invalidates them. The Stipulation required the "releases of documents and accompanying worksheets will be made periodically as they are processed" and that this "be completed by November 1, 1977." All else requires observance of this and other violated provisions, "... in consideration of the foregoing committment (sic) by the FBI and the Department of Justice ..." All also is conditional "upon defendant's performance of these committments by the specified dates." The Government's own affidavits and the pleading actually attest to repeated violation of the Stipulation.

227. I believe the Government also proves its own bad faith in the same papers. They admit that as of today I have not received all the nonexempt information included within the Stipulation. God faith required compliance with the Stipulation by November 1, 1977. Instead, the Government is still treating the Court, the Act and me as salamis and is still slicing away at all of us.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this _____ day of May 1979 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND