

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant
.....

Civil Action No. 75-1996

RECEIVED


MAY 29 1979

JAMES F. DAVEY, Clerk

MOTION FOR AN ORDER REQUIRING DEFENDANT
TO PAY CONSULTANCY FEE

Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court for an order requiring defendant United States Department of Justice to pay him for the work he performed for said defendant while acting as its consultant in this case, plus all expenses actually incurred by him in connection with said work.

Respectfully submitted,




JAMES H. LESAR
910 16th Street, N.W., #600
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of May, 1979, mailed a copy of the foregoing motion to Ms. Bestsy Ginsberg, Attorney, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.



JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM OF POINTS AND AUTHORITIES

On November 11, 1977, plaintiff Harold Weisberg and his counsel, James H. Lesar, met in the Department of Justice Building with Deputy Assistant Attorney General William Schaffer, Mrs. Lynne Zusman, then Chief of the Freedom of Information and Privacy Act Section, Civil Division, U.S. Department of Justice, and several FBI agents to discuss the resolution of certain problems preventing the conclusion of this case. Representatives from the Justice Department's Civil Rights Division, the Office of Professional Responsibility, and the Office of Information and Privacy Appeals were also present.

During this conference Mr. Schaffer proposed that the Department of Justice hire Mr. Weisberg as a consultant to review MURKIN records and advise the Department of Justice on wrong excisions and other matters, such as the existence of other records which had not yet been produced. While Mr. Weisberg did not reject this proposal outright, he did resist it. (See attached May 16, 1978 Lesar Affidavit, ¶¶4-5)

On November 21, 1977, Mr. Weisberg met in the chambers of Judge June L. Green with his counsel, Mr. Lesar, Mrs. Lynne Zusman, Assistant United States Attorney John R. Dugan, and two or three FBI agents. During this conference the government set forth its

proposal that Mr. Weisberg act as its paid consultant. Mr. Weisberg again indicated his reluctance to undertake this obligation. He stated several times that he wanted a sign of good faith from the government before he agreed to become its consultant. (Lesar Affidavit, ¶6)

But after this Court had commented that the government was not going to pay him as its consultant, then disregard his criticisms, he agreed, in response to a direct question by the Court, to undertake the consultancy. (Lesar Affidavit, ¶7)

Four days later, on November 25, 1977, Mr. Weisberg wrote Assistant Attorney General William Schaffer about the consultancy arrangement, the problems it entailed, its limitations, and his prompt steps to undertake the work. The first two paragraphs of that letter also indicated his concern about the consultancy:

Although on Friday you said you would be at Monday's in camera session with Judge Green, you were not. You also were not present at the subsequent conference in John Dugan's office. So I must let you know that what evolved cannot provide you with all you asked of me at our meeting of 11/17/77. I will do what I was asked to do as rapidly as possible but you should understand that there are limitations to what you can expect of the arrangement and of me under it.

All interests will be served, I believe, by having these matters recorded to assure against misunderstandings or claims of misunderstandings that may be made some time in the future. This may be particularly important because of the government's representations to the judge in camera and because they may have led her to expect too much.

(See Attachment 1 to Lesar Affidavit) Mr. Weisberg also enclosed a receipt in the amount of \$22.60 for dictation tapes which he had purchased and asked for reimbursement of this expense. As of this date Mr. Weisberg has not yet been reimbursed for this or any other expense which he incurred as a result of the consultancy agreement.

On December 11, 1977, Mr. Weisberg again wrote Mr. Schaffer. He informed Mr. Schaffer that he had spent 80 hours on the consult-

ancy and estimated that it would take about two hours per Section to complete the work. He noted that "you personally have not informed me of what compensations I am to receive" He then stated:

This is an unusual situation you have created, in part by misrepresentation to the judge that I had refused to be your consultant in my suit against you. I had in fact said and written you that I would, upon demonstration of good faith, beginning with the FBI's responses where it should respond. As of now and since then it has not been able to run its xerox machines or to respond to simple inquiries it will not allege are incomprehensible. While I do not like the situation and do feel, based on my experiences since your initial offer, that it is merely another device for stalling me and misleading the judge, I have proceeded in good faith and this will continue.

(See Attachment 2 to Lesar Affidavit)

No response was made to Mr. Weisberg's letters of November 25 and December 11, 1977. Accordingly, on December 17, 1977, Mr. Weisberg again wrote Mr. Schaffer. It began:

There has been more than enough time for you to have responded to my last letter if you sent it by some of the FBI's tame FOIA snails. That you have not, in my view, bears on the Department's and your personal good faith in this matter of my involuntary servitude all of you imposed upon me by misrepresenting to the judge.

Quite aside from the fact that the Act imposes the burden of proof upon the Department, there is the matter of my compensation. When your silence extended to this, I finally wrote you about it. Because of your continued silence I must now insist upon a written contract.

(See Attachment 3 to Lesar Affidavit)

Mr. Schaffer did not respond to Mr. Weisberg's December 17, 1977 letter either. Mr. Weisberg's counsel therefore wrote a letter to Mrs. Lynne K. Zusman, Chief of the Freedom of Information and Privacy Act Section, Civil Division, U.S. Department of Justice, on December 26, 1977. Mr. Lesar's letter informed Mrs. Zusman that

Mr. Schaffer had not responded to Mr. Weisberg's inquiries about his rate of pay and requested that she find out. He also inquired about the possibility of an interim payment to Mr. Weisberg. (See Lesar Affidavit, ¶11)

Mrs. Zusman made no response to this letter until Sunday evening, January 15, 1978, when she called Mr. Lesar at his home and inquired whether \$75.00 per hour would be enough to compensate Mr. Weisberg for the work he was doing on the consultancy project. Mr. Lesar told Mrs. Zusman that he thought this would probably be acceptable to Mr. Weisberg but he would check with him to be sure. (Lesar Affidavit, ¶12)

Mr. Lesar did check with Mr. Weisberg immediately and he subsequently informed Mrs. Zusman that Mr. Weisberg had agreed to accept the Department's offer. He also inquired again about the possibility of an interim payment and was told that he should write a letter to Deputy Assistant Attorney General William Schaffer explaining the nature of the agreement, what Mr. Weisberg had done and would do, the number of hours he was claiming compensation for, and his desire for an interim payment. By letter dated January 31, 1978, Mr. Lesar did this. This letter expressly requested an interim payment of \$6,000 for 80 hours of work at the rate of \$75.00 per hour. As suggested by Mrs. Zusman, Mr. Lesar sent her a complimentary copy of his letter to Mr. Schaffer. (Lesar Affidavit, ¶¶14-14; Attachment 5) In the meantime, Mr. Weisberg wrote yet another letter to Mrs. Zusman, in which he stated:

Meanwhile, I note Civil Division's record.
It has yet to respond to me when I asked what
I'd be paid. You finally did tell Jim verbally.
Why not in writing? Why is my bill for the
tapes I bought immediately not even acknowledged?
Does not this work two ways?

(Lesar Affidavit, ¶19)

At the March 7, 1978 status call held in this case, Mrs. Zusman reaffirmed the Department's commitment to pay Mr. Weisberg for

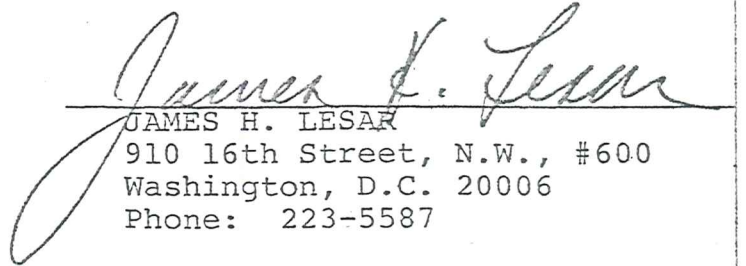
his consultancy work and described the Department's offer to pay him a fee as "generous and unique" and "highly unusual." (March 7, 1978 transcript, p. 7. Reproduced as Attachment 6 to Lesar Affidavit)

In view of the facts set forth above, it is abundantly clear that the Department of Justice offered to pay Mr. Weisberg \$75.00 for the work he undertook as its consultant and that Mr. Weisberg accepted that offer. After Mr. Weisberg had completed his work, which consisted of two reports totaling 216 pages in length, he submitted them to the Department of Justice. Through his attorney he also submitted a bill in the amount of \$15,000 for the 200 hours of work he expended on the Department's consultancy project. (See Exhibit 1, letter from Mr. Lesar to Mr. Schaffer dated July 7, 1978) This bill was returned to Mr. Lesar by Mr. Schaffer.

The government's conduct in this matter has been outrageous in the extreme. It used its muscle to force Mr. Weisberg into a consultancy agreement he really did not want to undertake in the first place. Then it ignored his inquiries as to the amount of pay he would receive for this work until it was afraid that he would make mention of its bad faith on this particular matter in front of Judge Gerhard Gesell in the important case which was argued on January 16, 1978, at which point it made the "generous and unique" offer to pay him at the rate of \$75.00 per hour. No sooner was ^{the} case in front of Judge Gesell decided (adversely to the Department) than it reneged on its contract with Weisberg. But the simple fact of the matter is that the Department owes Mr. Weisberg \$15,000, and it is long past time that it pay him.

Accordingly, plaintiff asks that the Court order the Department to pay him the \$15,000 it owes him as his consultancy fee, plus expenses actually incurred by him in connection with this work.

Respectfully submitted,


A handwritten signature in cursive script, reading "James H. Lesar", is written over a horizontal line. The signature is fluid and extends slightly above and below the line.

JAMES H. LESAR
910 16th Street, N.W., #600
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
: : : : :
HAROLD WESIBERG,

Plaintiff,

v.

Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

Defendant
.....

O R D E R

Upon consideration of plaintiff's motion for an order requiring defendant United States Department of Justice to pay him for work he has performed for defendant as a consultant, and the entire record herein, it is by the Court this _____ day of _____, 1979, hereby

ORDERED, that defendant United States Department of Justice shall pay \$ _____ to plaintiff as compensation for work he has performed for it as a consultant; and it is hereby further

ORDERED, that defendant shall also pay plaintiff the additional sum of \$ _____ as reimbursement for expenses he incurred in connection with his work as a consultant for the defendant.

UNITED STATES DISTRICT COURT

JAMES H. LESAR
ATTORNEY AT LAW
910 SIXTEENTH STREET, N. W. SUITE 600
WASHINGTON, D. C. 20005
TELEPHONE (202) 223-5587

July 7, 1978

Mr. William Schaffer
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Weisberg v. Department of Justice,
Civil Action No. 75-1996

Dear Mr. Schaffer:

As you are aware, last November you sought to have Mr. Harold Weisberg act as a consultant on the FBI's excisions and withholdings in the above case. Although Mr. Weisberg repeatedly resisted the pressure put upon him to act in this capacity, at the end of a conference in Judge Green's chambers on November 21, 1978, he reluctantly agreed to do it.

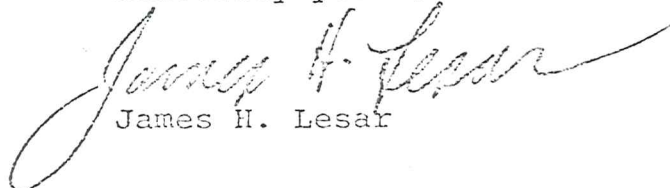
Mr. Weisberg has completed two reports totaling 216 pages in length. These reports show the massive noncompliance and obstructionism of the FBI in this case. They leave no doubt that FBI has violated the letter and spirit of the Freedom of Information Act and ignored Departmental guidelines on its implementation.

As may be seen from the enclosed letter to Mr. Quinlan J. Shea, Jr., Director, Office of Information and Privacy Appeals, I have delivered a copy of these reports to his office. They will also be given to Miss Betsy Ginsberg, the attorney representing the government in this case.

On the evening of January 15, 1978, Mrs. Lynne Zusman, Chief, Information and Privacy Unit, Civil Division, called me at my home and offered to pay Mr. Weisberg at the rate of \$75.00 an hour for the work he was doing. Mr. Weisberg accepted this offer.

Mr. Weisberg has informed me that his records show that he spent 200 hours working on this consultancy project. Accordingly, I am billing you in the amount of \$15,000 for services rendered by Mr. Weisberg.

Sincerely yours,


James H. Lesar

JAMES H. LESAR
ATTORNEY AT LAW
910 SIXTEENTH STREET, N. W. SUITE 600
WASHINGTON, D. C. 20006
TELEPHONE (202) 223-5587

July 7, 1978

Mr. William Schaffer
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

For services rendered by Mr. Harold Weisberg as
a consultant to the Department of Justice
in Civil Action No. 75-1996 \$ 15,000

properly withheld materials had not been restored;

b. At the very outset of the case he had sought to eliminate, or at least reduce, the inevitable problems which would arise when the FBI withheld information which was already public in the belief that it was not yet publicly known. He had offered to provide the FBI with a consolidated index to King assassination literature which would have alerted those processing the records to the fact that information which they considered private or confidential was in fact already known. The FBI rejected this offer, with the result that much public information was deleted from the MURKIN records.

c. His overriding objective was to finish another book on the assassination of Dr. King. He was old, poor, and had serious health problems which severely hampered his work. He simply did not have the time or the resources to review the 45,000 pages of MURKIN records which had been released and specify his objections to each deletion. In addition, this was the government's burden, not his.

4. The conference included several heated exchanges of this and other matters. In response to Mr. Weisberg's statements that neither he nor I had the resources to conduct a page-by-page review of the MURKIN files, Mr. Schaffer proposed that the Department of Justice hire him as a consultant to review the MURKIN records and advise the Department on wrongful excisions and other matters, such as the existence of other records which had not yet been produced.

5. Mr. Weisberg did not reject this proposal outright, but he did resist it for a number of reasons, including those specified above. He felt very strongly that the burden was on the government to correct its own wrongs, that he could not possibly spare the time to re-examine the 45,000 pages of MURKIN records, and that because of this latter factor, any employment of him as a con-

sultant would be of limited utility.

6. On November 21, 1977, Mr. Weisberg and I met in chambers with Judge June Green, Mrs. Lynne Zusman, Assistant United States Attorney John R. Dugan, and two or three FBI agents. During this conference the government set forth its proposal to have Mr. Weisberg act as its paid consultant and lobbied for it. While he did not state that he would not do it, he made it plain that he was reluctant to do so. He explained that he had no reason to trust the government or to believe that it would take appropriate action in light of his criticisms even if he were hired as its consultant. He stated several times that he wanted a sign of good faith from the government before he agreed to become its consultant.

7. Toward the end of the conference Judge Green made a comment to the effect that the government was not going to pay him as its consultant, then disregard his criticisms. She then asked him if he would agree to do the consultancy, and he said that he would.

8. On November 25, 1977, Mr. Weisberg wrote a letter to Mr. Schaffer about the consultancy arrangement, the problems it entailed, its limitations, and his prompt steps to undertake the work. The first two paragraphs of the letter also indicated in a general way his concern about the consultancy:

Although on Friday you said you would be at Monday's in camera session with Judge Green, you were not. You also were not present at the subsequent conference in John Dugan's office. So I must let you know that what evolved cannot provide you with all you asked of me at our meeting of 11/11/77. I will do what I was asked to do as rapidly as possible but you should understand that there are limitations to what you can expect of the arrangement and of me under it.

All interests will be served, I believe, by having these matters recorded to assure against misunderstandings or claims of misunderstandings that may be made some time in the future. This may be particularly important because of the government's representations to the judge in camera and because they may have led her to expect too much. (See Attachment 1)

Mr. Weisberg also enclosed a receipt in the amount of \$22.60 for dictation tapes which he had purchased and asks reimbursement for this expense. As of this date, Mr. Weisberg has yet to be repaid for this expense.

9. On December 11, 1977, Mr. Weisberg again wrote Mr. Schaffer. He stated that he had spent about 80 hours on the consultancy project and estimated that it would take about two hours per Section to complete the work. He noted that "you personally have not informed me of what compensations I am to receive" He further stated:

This is an unusual situation you have created, in part by misrepresenting to the judge that I had refused to be your consultant in my suit against you. I had in fact said and written you that I would, upon demonstration of good faith, beginning with the FBI's responses where it should respond. AS of now and since then it has not been able to run its xerox machines or to respond to simple inquiries it will not allege are incomprehensible. While I do not like the situation and do feel, based on my experiences since your initial offer, that it is merely another device for stalling me and misleading the judge, I have proceeded in good faith and this will continue. (Attachment 2)

10. On December 17, 1977, Mr. Weisberg again wrote Mr. Schaffer. It began:

There has been more than enough time for you to have responded to my last letter if you sent it by some of the FBI's tame FOIA snails. That you have not, in my view, bears on the Department's and your personal good faith in this matter of my involuntary servitude all of you imposed upon me by misrepresenting to the judge.

Quite aside from the fact that the Act imposes the burden of proof upon the Department, there is the matter of my compensation. When your silence extended to this, I finally wrote you about it. Because of your continued silence I must now insist upon a written contract. (Attachment 3)

11. On December 26, 1977 I wrote Mrs. Lynne Zusman a very brief letter. The first paragraph stated:

Harold Weisberg informs me that he has inquired what the per diem rate is for work he is doing but has received no response. Could

you find out and let me know as soon as possible. (Attachment 4)

I also inquired about the possibility of an interim payment for the substantial amount of work which Mr. Weisberg had already done.

12. In December, 1977, Mr. Weisberg brought suit to force the Department of Justice to waive the copying costs for JFK assassination records which the FBI had decided to make public. Oral argument in this case, Weisberg v. Bell, et al., Civil Action No. 75-2155, was scheduled to be heard before Judge Gerhard Gesell on the morning of January 16, 1978. On Sunday evening, January 16, 1978, I received a phone call from Mrs. Zusman. She asked if I had time to talk for a couple of minutes--was she interrupting my watching of the Super Bowl game? I said I was typing up a brief to be filed early in the morning. Mrs. Zusman then said she was calling in response to my letter inquiring about the per diem rate which Mr. Weisberg would be paid for his consultancy work in this case, a letter which I had written nearly three weeks before. She mentioned that she was concerned that I would make an issue out of this during the oral argument in front of Judge Gesell the next morning. Mrs. Zusman asked me, "would \$75.00 an hour be enough?" She also stated that the only basis for a consultancy fee that she was aware of was \$75.00 an hour which the Department had paid Morton Halperin for a project which he had undertaken for the Department. I indicated that \$75.00 an hour would probably be acceptable to Mr. Weisberg, but that I would have to check with him to be sure. I think I may have indicated that Mr. Weisberg was very dissatisfied with his consultancy project and would prefer not to go through with it at all.

13. My recollection of the \$75.00 an hour offer is clear and certain. I do not recall that any qualification or limitation was

placed on this offer. I did not subsequently act as if the offer had been qualified or made conditional in any way, not did Mrs. Zusman.

14. Immediately after my phone conversation with Mrs. Zusman, I phoned Mr. Weisberg and told him about the offer which had just been made. His initial reaction was that he did not want to continue with the project and would not accept the money offered. Later in our conversation he said he would accept the payment and go ahead with the project but give the money to me.

15. I later informed Mrs. Zusman that Mr. Weisberg had agreed to accept the Department's offer. I also made a verbal inquiry about the possibility of an interim payment. Mrs. Zusman told me that it was not customary to make interim payments, but this time it might be done. She said that I should write a letter to Deputy Assistant Attorney General William Schaffer explaining the nature of the agreement, what Mr. Weisberg had done and would do, the number of hours he was claiming compensation for, and the desire for an interim payment. Accordingly, on January 31, 1978 I wrote Mr. Schaffer as I had been advised to do and requested an interim payment in the amount of \$6000 for 80 hours of work already performed. As suggested by Mrs. Zusman, I sent her a complimentary copy of my letter to Schaffer. (Attachment 5)

16. On or about February 15, 1978, I received a call from Mr. Dan Metcalfe of the Information and Privacy Section, Civil Division, U.S. Department of Justice. He explained his concern that the \$75.00 an hour mentioned in my letter to Mr. Schaffer was a little too high. I believe he stated that he had conferred with Mr. Schaffer about this and that Mr. Schaffer agreed with him. He also stated that he had had a hasty conversation with Mrs. Zusman about this, but that she had been vague about the agreed-upon

rate of compensation. Since she was going out of town, a resolution of this issue would have to await her return from that trip.

17. Mr. Metcalfe did not state that Mrs. Zusman was without authority to offer Mr. Weisberg \$75.00 an hour. Nor did he tell me to have Mr. Weisberg stop working on the project. I told him that Mrs. Zusman had indeed made an offer to pay Mr. Weisberg \$75.00 an hour, that Mr. Weisberg had accepted it, and that Mr. Weisberg's time was worth more than \$75.00 an hour. When I stated that I did not see any basis for paying Mr. Weisberg less than the \$75.00 an hour paid Mr. Halperin, Mr. Metcalfe said that the Halperin project only involved 9-12 hours of work. I did not press for an explanation as to why this should make any difference in the rate of compensation.

18. At the March 7, 1978 status call held in this case, Mrs. Zusman made the following statement to the Court:

. . . and Your Honor may recall the Government's generous and unique offer made by Deputy Assistant Attorney General William Schaffer to pay a fee to Mr. Weisberg as a consultant for this work, which is highly unusual-- (Attachment 6, p. 7 of March 7, 1978 hearing)

19. On March 28, 1978, I again wrote Mrs. Zusman about the the consultancy. After recounting the circumstances which occasioned the letter, I wrote:

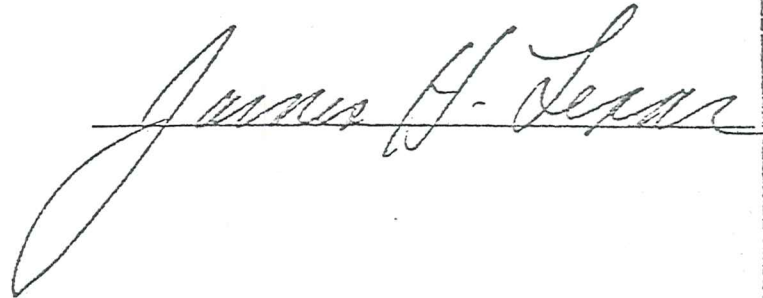
Weisberg's position is that he was offered \$75.00 an hour and he accepted it. He is quite angry that there is any question at all about the rate of compensation. Before he completes his project, I would ask that you state, in writing, whether the Department intends to honor the offer which you made to Weisberg on January 15th. If we are going to have to litigate this issue, too, I feel that we are entitled to know that immediately, and Weisberg insists upon it. (Attachment 7)

This raised an issue which Mr. Weisberg had addressed in his January 27, 1978 to Mrs. Zusman, when he wrote:

Meanwhile I note Civil Division's record. It has yet to respond to me when I asked what I'd be paid. You finally did tell Jim verbally. Why not in writing? Why is my bill for the

tapes I bought immediately not even acknowledged? Does this not work two ways?

20. By letter dated April 7, 1978, Mrs. Zusman responded to my letter of March 28, 1978. Mrs. Zusman's letter contains assertions which I do not think are true. For example, during our January 15, 1978 phone conversation I did not ask her what hourly rate Mr. Weisberg would be paid; she asked me whether \$75.00 an hour would be enough. I recall no comments by Mrs. Zusman even suggesting that Mr. Schaffer would have to approve the \$75.00 an hour offer before it would become final. Indeed, if this were true, I would have had no basis for making an application to Mr. Schaffer for an interim payment in the amount of \$6000, which I did at Mrs. Zusman's direction. Nor do I recall that Mrs. Zusman had stated that the proposal to pay a "National Security Expert" (Morton Halperin) \$75.00 an hour had not been adopted. My recollection is that she directly stated that the government had either paid, or agreed to pay, Mr. Halperin \$75.00 an hour for some consulting work. (Mrs. Zusman's April 7, 1978 letter is attached hereto as Attachment 8)



WASHINGTON, D.C.

Subscribed and sworn to before me this 16th day of May,
1978.



NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires

April 14, 1979.

Route 12 - Old Receiver Road
Frederick, Md. 21701

November 25, 1977

Mr. William Schaffer
Assistant Chief, Civil Division
Department of Justice
Washington, D. C. 20530

Dear Bill:

Although on Friday you said you would be at Monday's in camera session with Judge Green, you were not. You also were not present at the subsequent conference in John Dugan's office. So I must let you know that what evolved cannot provide you with all you asked of me at our meeting of 11/11/77. I will do what I was asked to do as rapidly as possible but you should understand that there are limitations to what you can expect of the arrangement and of me under it.

All interests will be served, I believe, by having these matters recorded to assure against misunderstandings or claims of misunderstandings that may be made some time in the future. This may be particularly important because of the government's representations to the judge in camera and because they may have led her to expect too much.

Because I do not look ill and am not crippled, people do not really comprehend that my activities are restricted and that the commonplace can be hazardous for me. This is one of the problems I had in mind when I told you that transportation presents problems to me, thus I could not accept your offer of working space and help down there.

I had an accident after I left the meeting of Friday, 11/18. I tell you about it because it illustrates why I simply cannot do what others might expect of me.

You will remember that the FBI representatives said on 11/11 that they were reprocessing the cards that index the prosecutorial volumes and would mail them to me prior to our next meeting. They did have them processed but had not mailed them by Friday, 11/18, so I picked them up. There were close to 3,000 sheets of paper. They were entirely unpackaged. They were divided into two, each half held together by a narrow band of cloth strapping. I was able to get half only into my attache case. The FBI did box the remainder for me after the meeting.

As I entered the bus carrying the overloaded attache case in one hand and the box in the other, the attache case glanced against the arm of a seat and then bumped me in the groin. Ordinarily this would have been minor but with me it is not. It turned out that I had hemorrhaged internally. I do not know how much. I know the visible area at the skin level is the size of a tennis ball. This is because I am on a high level of anticoagulant to deter further blood clotting. Major veins have been blocked for several years. The concern I have over this is not from the bleeding but from clotting, already a major danger to me.

This also illustrates a major handicap I have in the present project as well as in all my work for more than two years. I may not fall or cut or bruise myself.

Because of these circulatory problems, I cannot bend well. In addition, because of the nature and extent of the venous supports I must wear all the time, slight bending gets them out of adjustment. They must fit perfectly to be a benefit. Conversely, if they do not fit well, they are a danger.

For more than a year I have not been able to work from the lowest drawer in file cabinets. Before I began to receive MURKIN records, I had to shift all my files to empty these bottom drawers. This was because of the bending or squatting required and because from those positions I get dizzy and can fall.

By the time I began to receive the MURKIN records, I had exhausted every bit of file space in my office save those bottom drawers. I had no other place to put the MURKIN records. When the lower drawers were filled, I had to store the remaining FBI records in the basement.

This means that systematic consultation with these MURKIN records is impractical for me. Instead of making writing notes as I read records, I made extra copies of the small percentage I may use in writing. (For these copies I do not have file space, either. I have to keep them in boxes.) This is why I do not have writing notes on which to draw in the current project for you.

Most of what I can provide you will be restricted to what comes from the compliance notes I made for Jim Lesar. Those notes are not and were not intended to be inclusive. They are illustrative of noncompliance, including on the withholding of names. They do not include all withheld names even where the withheld names are known publicly. As a practical matter, I cannot take time to go into each and every one of the notes I made for Jim.

However, I will dispense with all other work that I can postpone until I complete what you have asked of me.

To a larger extent than you or Lynne Zusman appear to recognize, I have provided the FBI with specific record identification where there is withholding and where the withholding seems to be unjustified. I will review those letters after reviewing the notes. I mention this now because the government represented otherwise to the judge and because I believe I owe you the obligation of informing you of what impends.

You should also be aware that including those matters about which I have already written will not address full compliance with what can reasonably be expected, given good faith and searches in due diligence. The judge has been given to understand the opposite. What I am saying is true in any formulation, whether it be interpreted from the language of my requests or from the Department's substitutions for my requests.

Where no record has been provided, obviously I cannot supply a Serial Number for it. I have informed the FBI that certain records have not been provided although their existence is indicated by other records. The response of the FBI is that it has in hand affidavits attesting to a proper search. I owe it to you to inform you that from my knowledge and experience, not limited to this case, the FBI is not alone in having affidavits for all seasons. They are not uncommonly false. Commonly, they are executed by those without first-person knowledge. Aside from the affidavits filed in this case that are not accurate and truthful, there are others. One MURKIN example is the affidavit of Atlanta SAC Hitt. It attests that there was no black bag job or anything of the sort. There was. I have reports on it addressed to Hitt.

Another gray area is the total lack of records where I have personal knowledge of what leads to the belief that records must exist. There will be illustrations in the list I will be providing. My purpose here is to inform you of what to expect and to make proper searches and compliance possible prior to my completing the listings. This is because I have already written the FBI with adequate specificity.

These and other aspects involve an FBI mindset that has led to incredible nitpicking. The most recent example followed the in camera conference. One of the items of my requests deals with photographs of other suspects. Among those not provided are prints I personally supplied to the FBI. It did not copy and return them. What I told the FBI about this has been and continues to be ignored.

Instead of proceeding on the basis of the information I supplied it and complying in this matter, the FBI argues. It claims, for example, that not I but the editor of the local Frederick newspaper gave it these photographs. While this is irrelevant, it also simply is not true. I will prove it is not true if this becomes necessary and from the FBI's own records. I left these photographs for the local Resident Agent because he was at the Baltimore Field Office. I arranged to leave the photographs for him to pick up on his return to Frederick pursuant to phone conversation. His travel records will establish that in fact he was then at the Baltimore Field Office.

On this more time and money have been expended in perpetuating an effort at noncompliance than would be required with full compliance. I gave the FBI a list of field offices where I have positive reason to believe relevant records will be found. In several instances I also provided names that could lead the field offices to such records if they are not found in the MURKIN files.

Instead of conducting a belated search on this item of the requests on which it had already sworn falsely in this instant case, the FBI wasted more time in preparing more pointless arguments. Latest is its telling me on Monday that I had not given the Baltimore Field Office prints but that negatives were found there. It still did not provide prints made from the negatives it admitted locating. It did not explain why these negatives did not turn up earlier. Or how without an index they were located. Nor is it explained how those reviewing these records in Washington were unaware of the existence and location of my prints. Those analysts and reviewers went over records showing that Baltimore sent my prints to the Dallas Field Office.

The newest attempted justification of noncompliance is to claim that I have expanded my requests. I believe I have made no new requests. All are a reiteration of those I filed prior to the filing of this suit or are part of what has been provided in the Department's substitution for my requests.

The one possible exception exists because initially it was not possible for me to provide the FBI's titles for some of its political files. In that case I did write a formal request months ago in the event the FBI interpreted my request other than I intended. We did reach a verbal understanding on this. It since has not complied with that understanding.

The subject matter is the FBI's political operations. The FBI informed me that certain of those records were under court restriction. I volunteered to make no demand for any separate review of those records in compliance with my request, which does not include those sex and other personal matters central in that review, if the FBI would provide me with copies of records it did release to others and of those few records about which it gave public testimony to the Senate's Church committee. I have proof that such records have been released to others. I believe I owe it to you to inform you of this. I have made repeated requests for copies of those records used in the FBI's own Church committee testimony. These records are included in the priority requests of others. While I do not know in detail what records have been provided to these others, I do know that months ago there was partial compliance. I have not been given any explanation of the withholding of these records from me.

This gets into another area of which I believe I must inform you, a political area. When the FBI gave me neither these records nor any reason for not providing copies, I asked for separate, partial compliance, for one or two only of those used before the Church committee. These relate to the approval within the FBI for a campaign against Dr. King alleging that in Memphis he used the accommodations of a white-owned rather than a black motel.

I explained my reasons for asking for these few pages. One is that I want to make verbatim quotation in my own writing from primary rather than secondary sources. The second is that from my personal inquiries prior to and following this FBI Senate testimony there is no doubt at all in my mind that, despite approval for this particular campaign against Dr. King, the FBI did not launch it.

This particular withholding coincides with a large nationwide campaign against the FBI by Mark Lane and Dick Gregory based on such false allegations and others still worse. It coincides also with similar aspersions from the House assassinations committee. One possible explanation of this continued withholding of what is public is that it enables the FBI to pretend it is being persecuted and that all writers who do not agree with it criticize it unjustly and inaccurately.

There are other items of the requests that cannot be addressed from a review of the records that have been provided or from the notes I made when I read those records. Another example is the surveillance item. With the search limited to MURKIN, retrieving such records is an assured impossibility. Limiting other searches to HQ indices of approved bugging and tapping involves other automatic exclusions from searching about which I have already written the FBI.

In this sense and in the sense of potential political liabilities, I have a Headquarters directive to the St. Louis field office that amounts to instructions to break into the premises of James Earl Ray's sister and brother-in-law, Carol and Albert Pepper. I have no record of any response by that field office. I know independently that at that time the Peppers were aware of a burglary in which nothing of value disappeared.

My letters to the FBI go into what I have observed in and learned from the records provided and more often to what was not in them. When we conferred with the judge on Monday, an effort was made to pass this off by representing my letters as incomprehensible. It will become clear that this is not true. It will also become apparent that there are no requests for clarification of the allegedly incomprehensible. I recall no meeting with any FBI representative in which a verbal request for clarification was made of me or my counsel. I believe I owe it to you, particularly because of the unusual situation in which I am, to put you in a position to determine for yourself whether or not this is one of those "games" to which you referred in our first meeting, those you said should end once and for all.

Separate from whether the FBI's current interpretation of the stipulations is faithful to them is its performance under them. It was to provide these records as processed. Yet none of the Memphis field office files were sent to me until the last moment, the end of September, although some were processed in July. All 6,000 pages were sent to me in a single shipment. As my correspondence shows, it was in unmanageable form. It was without any listing. It also was incomplete by the listing provided after my complaint.

The FBI did not fail to comprehend that it had not provided copies of all the records it listed as having been provided from the Memphis field office files. It merely continued not to provide them although they had been processed and had been reviewed. Providing them required no more than having them xeroxed.

I again requested the six missing sections prior to the conference of 11/18/77. I was then told I could pick up the copies at the conclusion of that meeting. When Jim Lesar and I returned to the FBI Building for this purpose after the conference, we were told that copies had not been made. Then I was told they would be mailed later that day. After another week I still have not received them.

If you want other examples I will provide them. Some will appear when I get to reviewing my letters. My purposes here are to inform you of pitfalls, to enable you to evaluate my honesty in this matter and in what I will be providing and to suggest a means by which you may avoid the potential consequences of this misrepresentation to the judge as well as what can follow it. This is to address the readily identifiable items in those letters before I reach that point in my review. As the memo I left for you with the FBI on 11/18 says, I believe this also addresses "good faith."

The FBI's posture is that everything has been reviewed by the Department. From my knowledge and experience, this presents you with a very serious problem: the competence of the review - in fact, whether it is much more than a rubber stamp. If you

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require amplification, I will provide it in such detail as you may request.

Not unrelated is the continuing withholding in the 25 numbered volumes. (There are 29 in all. Some have more than one part.) These were indexed. The indices were provided under discovery. They have now been reprocessed to eliminate admittedly unjustifiable withholdings. But the volumes indexed have not been reprocessed. These same unjustifiable withholdings still exist in them. A year ago the FBI office of Legal Counsel recognized reprocessing would be necessary.

In reprocessing the index cards it appears to have now reduced the privacy claim to prisoners used as sources. It has given me a list of these names. I have indicated only a few in whom I have special interest, a very small percentage. With regard to those I have told the FBI that I will take at face value its representation that disclosure will present hazard to those prisoners or former prisoners. This reduces the reprocessing of those basic volumes to the virtually automatic.

From the subject matter knowledge you expect me to use in your interest and against selfish interest, which may require that I be able to make telling points against you in court, I strongly urge that these volumes be reprocessed before I get to the point where I will be having to record specific illustrations of the ridiculousness of some of the withholdings in these and other volumes. I assure you that there was and there continues to be withholding of the public domain.

The FBI's position is that while the names may be known the content of the reports has not been connected to the names. I recall no instance of which this is true of the prosecutorial file. A large part is in books, in newspapers, in the proffer of evidence at the guilty plea hearing or was the subject of testimony at the two weeks of evidentiary hearing of October 1974.

I am constrained to make you aware of other liabilities you may be assuming in the continued withholdings from these prosecutorial volumes and other records of the same content. The FBI has represented to you that the indexes to the books on the subject were of no value to it. This is demonstrably untrue. But the FBI did not tell you that I also offered it my indexes to the guilty plea hearing and the two weeks of evidentiary hearing. It refused both. If it had not refused to let itself be aware of what was public domain, it would not have engaged in these withholdings, it would not now be faced with the costs of reprocessing the public domain, and the Department would not now have the problem it confronts.

Once I reach this point in my review and listing, I will be making a record others may also use against the Department. These others range from individuals, of whom I suggest ^{the} Mark Lanes may be in the majority, to the Congress. There is more than one Congressional interest of which I have personal knowledge. One from which great embarrassment to the Department can flow out of this case is a GAO study of waste in the handling of FOIA requests.

The notes from which I will be working are limited to that which the FBI claims is responsive to the December 1975 request only. The arbitrariness of this approach is outside my control. For the moment all I can report is that I believe there has not been compliance with my earlier requests and that they are not included within what was asked of me on Monday. I am willing to undertake other efforts with regard to these earlier requests if you desire it. This offer extends also to other Departmental components. With the smaller quantity of records provided I did not have the need to make as many notes relating to areas of compliance or noncompliance.

My writing is to inform you of these matters and to begin to undertake the discharge of the responsibilities imposed on me (on your client rather than on me by the statute) is not taking time from my examination of my notes and the worksheets. The manner in which this was arranged by the Department left me without immediately available copies of some of the necessary records. I have had to await their coming. We did not have enough time on Monday to obtain them from Jim Lesar's files before I had to be in line

to await my bus and to be certain of a seat on it.

Although your offer included what equipment I might need, no arrangement to provide any was made prior to the Department's representations to Judge Green. I am aware of the inconsistency that would be apparent if the equipment had been available. John Dugan did offer me his dictating machine. I felt it would be unwise for me to accept given the accusations that have been made about me. When there also was no provision to get any dictating equipment to me promptly, I offered to use my own tape recorder. When no tapes were provided, I offered to obtain those of the kind John Dugan displayed. As soon as I was home, I went off to locate that brand. It is no longer distributed in Frederick. I therefore obtained two independent recommendations and then purchased those for which I enclose a receipt in the amount of \$22.60. You will note that I obtained a discount for the government. A little more than two hours in time and 17 miles of driving was required. There are ways in which I would have preferred to spend that time, ways in which I could have put it to better use for you. I report it to explain the attached receipt so you can arrange for repayment and as evidence that I did begin to perform immediately and in good faith.

If you will read and consider independently what I report herein, the delays may have been worth the time lost, and the time I now take.

There is nothing I can do about what the FBI's widely distributed misrepresentations about me leave in the minds of those who receive them. Your Division is among the recipients. (It also is one of the Department components that has not complied with my PA request of about two years ago. Not one, including the FBI, has complied.) There has been no response to my invocation of my rights under the Privacy Act. There likewise has been silence since I sent the FBI copies of records that clearly establish the falsity of its vicious fabrications.

To a degree this will appear late in the listing I will be making and still later in the review of what I have written to the FBI. This is one of the areas it dismisses as an extension of my FOIA requests. Part will appear in the listing because I am in MURKIN files more than is reflected in those records that have been provided. I am in these MURKIN files in a way the FBI does not want scrutinized. It therefore withholds. To get away with this, it makes the claim that other records were not located in its search. I can take it by the hand and lead it to other records on me and relevant in this case as well as in unmet Privacy Act requests.

There is point in this for you and at this stage because of what it means in this case and what it represents in other cases. This case begins with the directive, approved by Hoover, that my requests not be complied with. To effectuate this noncompliance, the malevolent records were distributed widely. I have more than adequate samples. This was done inside the Department, to the White House after my first request for public information, and to unspecified Tennessee authorities at the time of the 1974 evidentiary hearing for which I was the opposing investigator. There are FBI records I have in which it spells out that because it does not like what I write it need not respond under FOIA. There are other records in which it is explicit that when the Department realized it could not prevail in court, it decided to deny me first use of what it would have to surrender to me. In this instant case it has angled releases to the press to this end. I have copies of stories from various field office files. I do not rely on what reporters told me contemporaneously.

As long as the FBI can get away with ignoring my invocation of the provisions of the Privacy Act, it can continue to use this means of influencing the minds of others. As long as it is able to continue to withhold other records and I am denied the right to correct error in them, its mind-control capabilities within the government are extended. Moreover, its deliberately fabricated libels are freely available in its reading room now, under cover of this case.

Need I remind you that there is a current Congressional investigation and that it has interest in precisely these records? I tell you the FBI did precisely the same thing

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with the Church committee. It thereby influenced that that committee could know.

I do not believe you will find what I wrote the FBI about this months ago to be "incomprehensible." I do believe you will find that in the course of establishing that it had fabricated still another defanation of me I sent it proof of the existence of relevant records not provided by other components.

As I provide a sequential list of illustrations of withholdings, this will be near the end. There are 5837 numbered records, meaning perhaps 20,000 pages, prior to it. It is the Letterhead Memorandum from A. Rosen to Mr. DeLoach in which Mr. Rosen stated on October 20, 1969, with the expectation of peppetual secrecy, that there "is an attempt by Weisberg and Stoner to discredit the Bureau" with what he termed "unwarranted, scurrilous allegations." One repeated by Mr. Rosen is that "Stoner claimed that two men in his party formerly served as informants of the FBI."

J. B. Stoner heads the most anti-Semitic of political parties, the "National States Rights Party." Its basic tenet is that the chief thing wrong with niggers is Jews, of whom I am one. He and his associates appear in Headquarters and field office MURKIN files because they were considered suspects and because for a short period of time after the guilty plea he was one of James Earl Ray's lawyers.

~~Excerpt~~ A police official had shown Stoner copies of FBI reports the sources of which were readily identifiable. I informed a Department lawyer of what Stoner was prepared to provide had been done by FBI informers. Some of the dubious activities of these informers is no longer secret. Once indications were known to the Department - eight years ago - it became necessary to manufacture more mind-controlling records about me. What I actually reported is not "scurrilous," has been proven to be completely truthful, and it explains continued withholdings in this case.

From my knowledge of this crime and its investigation, of the files provided in this case and from the reading of thousands of pages of FBI political records, I believe that the withholding of records relating to me in the King assassination have the obvious motive of seeking to deter further exposure of FBI misdeeds that now are becoming public knowledge.

Its rewriting and unjustified interpretation of the surveillance item of the requests assure noncompliance. The requests are not restricted, for example, to what was approved by FBIHQ, nor are they limited to acts performed by FBI agents. Aside from what I have said at conferences about this, I assure you I have FBI proof that the FBI was the beneficiary of such surveillances.

I am aware of the dislike of long memoranda. This, however, is a long case with a longer history and a very large volume of records. I have taken this time because of your personal assurances relating to this case and compliance in it as well as to eliminating the need to go to trial. For you to be able to achieve your stated objectives I believe that you must be informed, particularly because there is contradiction of the government's representations about withholding and about compliance. I am undertaking to inform you with time that come from other work and from the writing I want to do.

Perfection is not a human state. We both know I am the plaintiff in this matter. We know that the present situation, one I believe is unprecedented, can be interpreted as shifting the burden of proof onto me. There are elements of other unfairness, as my having to disclose what will enable the preparation, if not also the fabrication, of defenses against what I report to you. I do not hide my cause for resentments over personal abuse of and damage to me extending over a long period of time. As I believe the record will show that this has not influenced me or my conduct in this matter, I believe it also will not lead to any distortions in what I provide you. If there is any allegation of error or prejudice, I will confront it provided that a record is made of that confrontation.

Sincerely,

Harold Weisberg

Mr. William Schaffer
Civil Division
Department of Justice
Wash., D.C. 20530

12/11/77

Dear Bill,

Jin phoned me Friday about another matter. He then told me that he had spoken with Lynne, who told him to tell me to forget about John Dugan's concern about the tapes I am to send getting lost in the internal mail, to just send them to her. Getting this message back and by indirection required more than two weeks. Jin also told me that Lynne is anxious to get what I am doing. Not anxious enough for either of you to respond to the time I've taken to try to serve you. However, I report on that.

I have spent about 80 hours collecting the notes, which I was not able to file as I made them, comparing them with what I sent to Jin contemporaneously and assembling the most complete set possible and then beginning a review of them. I am at HQ Section 40. Because I will be having to do the same thing with what I have written to the equally unresponsive FBI it may be a fair estimate that it will take me about two hours per Section.

Getting this much done has required that I put in days that have run to 20 hours. I have also had medical and dental appointments and a death in the family. There was the considerable amount of time required by the FBI's release of the material it has been denying me for up to almost nine years, what I testified to a year ago this past September in this suit. Responding to inquiries of the press has taken much time. While it has now tapered off it may not be over.

I did not begin dictating to a tape recorder when I began for the reasons about which I wrote you, also without response. Since then, aside from Dugan's legitimate apprehension over what can happen to an only tape in the mails, I have my own apprehensions about your (plural) good faith in all of this. I will not be mailing any tape until I have been able to make a dub to protect against loss and any other contingency. As of Thursday my auxiliary tape recorders had not been picked up by Sony for repair. (It is this way in the country. I am not prepared to buy another and unnecessary tape recorder.) and I am awaiting some tangible evidence of good faith. As examples, a few of the many available, you personally have not informed me of what compensations I am to receive (you told me the rate for consultancies but I have no idea what that is) and after three weeks and after writing to you about it I still await the missing Sub G Sections the FBI said needed only zeroxing when it admitted three weeks ago that it had forgotten to include them in the copies it had made - of what it had earlier neglected to provide after assuring me it had.

This is an unusual situation you have created, in part by misrepresenting to the judge that I had refused to be your consultant in my suit against you. I had in fact said and written you that I would, upon demonstration of good faith, beginning with the FBI's responses where it could respond. As of now and since then it has not been able to run its xerox machines or to respond to simple inquiries it will not allege are incomprehensible, while I do not like the situation and do feel, based on my experiences since your initial offer, that it is merely another device for stalling me and misleading the judge, I have proceeded in good faith and this will continue.

This bizarre situation has grown more so with the FBI's JFK release of the 7th. Because I understand your purpose in asking me to be your consultant to be to avoid unnecessary litigation and time in court I mention this, too, although it was not my major purpose in writing you early on a Sunday morning.

The FBI did not notify me of the time of the release or the conditions of examination until the day before it was scheduled. If I had wanted to make an examination or if my obligation to you had permitted it a dental appointment and the difficulty of arranging transportation to keep it precluded my examination. Before the FBI bothered to write me it had made copies available to others. They, in turn, had had time to make copies for

still others, who were in touch with me. In addition, upon complaint from the media, copies were provided to the media of this partial release prior to my receipt of the FBI's belated notification. Jim had written and asked for a waiver of fees for me, which also is added indication of my desire for these records. Neither he nor I heard further on it. Then there is the fact that I have about 25 JFK requests going back to 1968. They are without response even though I testified to them more than a year ago in this instant case. My testimony means that in addition to the fact of these requests all the lawyers involved in this case and the FBI FOIA personnel involved are all privy to that particular non-compliance. The partial release includes material relevant to one of my earliest ignored requests. I still await copies, even though it has been released. I likewise still await even acknowledgement of the letters I wrote the FBI about this.

Aside from anything Jim may have told Lynne I started to raise the question of these unmet JFK requests with her the first two times we met. While she expressed interest in avoiding unnecessary litigation she has not found time to discuss these matters. As a result I see no way of avoiding litigation over that. It has been quite hurtful to me. I doubt you will find as indefensible an FOIA record.

You also should know that based on what I've been told of the content of these 40,000 FBI pages I have reason to believe that they hold what the FBI should have provided under discovery in my C.A. 75-226 and did not provide. I'll be surprised if this is not also true of my C.A. 75-1445.

If all of this seems unusual to you, then I tell you that your own division has yet to comply with my FOIA request of two years ago. It was not even acknowledged. Much later my wife filed one and received partial compliance. I believe her appeal is in limbo. And this also is not at all unusual.

What I'm pleased me about is Erin Shea's letter of 12/6/77 in this case. I quote two parts: "As to all other Civil Rights Division records, the action of July 26 was ~~the~~ the final administrative action for purposes of the Act. Your letter to Attorney General Bell does not set forth any adequate basis why the action should be reconsidered, given the facts available to me." (MY emphasis.) and, "Judicial review of my action on this appeal is available to your client.."

With regard to information available to Mr. Shea may I ask what in the world you asked me to be your consultant for if you do not use my services and act without the "facts" that can't be "available?" Not that I have any reason to believe there were not other and readily available sources of "facts" if Mr. Shea had any interest in fact. My own experiences with him are uniform - he wants no fact of any kind. He also does not taint his affidavits with them, as I am quite prepared to prove if that becomes necessary.

His letter concludes with the usual formality. In content I take it as an invitation to sue. This is what I told Jim last night, accommodate Mr. Shea. Only in this case have the complaint specify that. I do not want to file unnecessary suits. I want to file none. But when all other options are exhausted, I have no choice. Your people were not listening to Jim when he spelled this out, the latest time in camera on 11/21. As your consultant I tell you that you will be hard put to find a case you will want to defend less than one in which Civil Rights is defendant. I am not going to take the time to spell it all out because when I have in the past I have not had even acknowledgement. I meet my obligations to you, I believe, when I inform you. I offer the opinion that in this case it may be particularly embarrassing to the Department. In court I will have no choice. I would encourage you to believe that there may well be other interests and that none of it will bring you joy. I tell you this with what I believe is an adequate understanding of the nature of the representations the Division will make or has made to you. Absent any sign of good faith from the Department in this matter and given Mr. Shea's record with me I am not prepared to do more than alert you. Believe me or not I am serving your interest in telling you this, not my own. If as now seems inevitable this goes to court you will learn soon enough.

Sincerely,
Harold Weisberg

HW

Mr. William Schaffer, Ass't Chief
Civil Division
Department of Justice
Washington, D.C.

12/17/77

Dear Bill,

There has been more than enough time for you to have responded to my last letter if you sent it by some of the FBI's tame FOIA snails. That you have not, in my view, bears on the Department's and your personal good faith in this matter of my involuntary servitude all of you imposed upon me by misrepresenting to the judge.

Quite aside from the fact that the Act imposes the burden of proof upon the Department, there is the matter of my compensation. When your silence extended to this I finally wrote you about it. Because of your continued silence I must now insist upon a written contract. To now I have had no cause to take the Department's word. Nothing in recent months justifies my now taking its verbal assurances.

You stipulated the normal consultancy rate. I did not ask what it is. Lynne was not able to tell Jim what it is. If she later inquired, as of last evening Jim was not aware of it when we spoke by phone.

The missing Sections of Memphis Sub G have not arrived. I have had no word about them from the FBI or from anyone in your office in response to my having written you. I remind you that the Department assured the court other than truthfully about this and that only xeroxing was required.

As I have continued the work I have come across a good example of the reason I told you that your interest and mine both required some demonstration of good faith from the FBI and that it was well able to do much of what you have unloaded on me. Jim and I, at our first meeting with you and in subsequent meetings with your associates, have each said that the FBI should review its own worksheets. Jim went into this when we met with Judge Green in camera.

Despite the fairly serious limitations I have observed in the FBI I am without any doubt at all that it is able to read and that this elemental skill does extend to its own worksheets. If it does no more than Jim said, examine its own entries under "Remarks," relating to Section 53 it will find these outside referrals, in each case withholding the relevant records from me:

State- Serial 4144, two Not Recorded Serials after Serial 4152, 4188, 4216.
IRS - two separate records identified as Serial 4147, 4219.
USPC-4234.

If when I read the National Security Council's directive on E.O. 11652 I understood it correctly then after 30 days without response from the agency to which any record was sent the obligation of compliance or withholding under a relevant and enumerated exemption was imposed upon the Department. Over a period of months I have asked about these many records referred to other agencies, especially the CIA. The FBI has refused even to give me a copy of a letter in which it reminded any agency to which it referred as little as a single record.

Of course I am the plaintiff in this case, as I am your consultant. But I am also a taxpayer. In my taxpayer capacity I want to know why it is necessary to waste government money in paying me to review these FBI records it or others on your staff or elsewhere in the Department could and should have reviewed. I am giving you this written record on but one of the more than a hundred Sections about which as your consultant I will be writing you. I believe it is a fair representation, which occurred to me when I was going over my notes, and that despite your record of indifference to what I have sent you I owe you this example.

(With Serial 4193 there is the claim to (b)(5). I can't be certain but in time this appears to coincide with the "Snayd" identification, I will be raising this (b)(5) question in writing because the many times I have raised it in meetings have not elicited response.)

Earlier and again as your consultant I gave you certain cautions. One related to Congressional interest. What officialdom has done to the Act has generated much fear among those who ~~sanctify~~ regard FOIA as a vital part of functioning representative society, as I do. I told you that approaches had been made to me but that I had had nothing to do with them although I believed and believe that I can give testimony in support of the Act as it exists.

Recently I have been asked about this. Unlike the past I have not declined. What has happened to me in this case and is happening to me right now forces me to consider what in the long run will give me most time for the work I want to do. I do not know if I will be asked to testify. I also have not decided whether I will ask to be heard. I have decided that the virtually total public silence on this that I have imposed on myself is over.

In a few months this matter will be a decade old without compliance. It will be a decade old in any event. The Department's course assures there will still not be compliance on the anniversary. What you have asked of me cannot mean there will be compliance, as I believe I have stated from the first.

With these considerations in mind I suggest you consider the meaning of the Department's refusal to go over its own worksheets and its refusal to do anything about the many relevant records they show are withheld and have been for periods of up to more than a year without claim to any of the exemptions of the Act. What I prove here relating to Section 53 is but a drop in the very large bucket of non-compliance, knowing non-compliance.

I will ask my wife to read and correct this and to satisfy herself that it is comprehensible. Despite prior representations and my offer to rephrase whatever it is claimed cannot be understood I have not, as of today, received a single letter back for any clarification.

Sincerely,

Harold Weisberg

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December 26, 1977

Mrs. Lynne K. Zusman, Chief
Information and Privacy Section
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

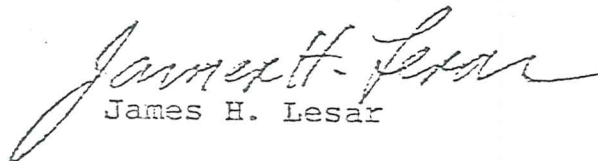
Re: Weisberg v. Department of Justice,
Civil Action No. 75-1996

Dear Mrs. Zusman:

Harold Weisberg informs me that he has inquired what the per diem rate is for the work he is doing but has received no response. Could you find out and let me know as soon as possible?

Also, Harold would appreciate it if the Department could arrange to pay him for the work already done. I believe he told me a couple of weeks ago that he had put in more than 80 hours on this project. If payment for the work already done can be arranged, I will have him tally up the exact amount of time spent to date and let you know what the total is.

Sincerely yours,


James H. Lesar

JAMES H. LESAR
ATTORNEY AT LAW
910 SIXTEENTH STREET, N. W. SUITE 600
WASHINGTON, D. C. 20006
TELEPHONE (202) 223-5587

January 31, 1978

Mr. William Schaffer
Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Weisberg v. Department of Justice,
Civil Action No. 75-1996

Dear Mr. Schaffer:

When we conferred on November 11, 1977, you proposed that the Department of Justice pay my client, Mr. Harold Weisberg, to detail the FBI's unjustifiable excisions and withholdings in his suit for records pertaining to the assassination of Dr. Martin Luther King, Jr. At an in chambers conference on November 21, 1977, Judge June Green in effect directed this.

As health and circumstances permit, Mr. Weisberg has been laboring to accomplish this. As of December 26, 1977, he had already put in more than 80 hours of work on this project. Accordingly, I wrote Mrs. Lynne Zusman on that date to inquire about the rate of compensation, which had not been specified, and the possibility of an interim payment. On January 15, 1978, Mrs. Zusman called me to offer a rate of payment of \$75.00 per hour, and Mr. Weisberg has accepted this.

At the \$75.00 an hour rate, the bill for the first 80 hours of work comes to an even \$6,000. I would very much appreciate it if you could set in motion the processing which is needed to get this sum to Mr. Weisberg as soon as possible.

As I think you know, Mr. Weisberg lives in a rural area at Frederick, Maryland. Because of this, the sum of money involved, and the fact that his mailbox has been repeatedly subjected to vandalism, the check should be sent by registered mail to: Mr. Harold Weisberg, Route 12, Frederick, Maryland 21701.

Mrs. Zusman requested that I explain the nature of the work done by Mr. Weisberg to date. Briefly, it is this. He began by assembling, with some difficulty, complete sets of his notes on

the MURKIN records provided him by the FBI, the worksheets which accompanied the records, and his correspondence with FBI agents.

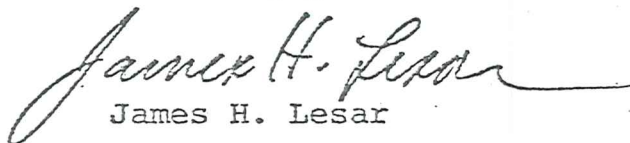
After assembling the relevant records, he reviewed his notes on the 20,000 pages which comprise the FBI Headquarters' MURKIN files. These notes contain his comments and analysis of the substance of the MURKIN investigation as well as his criticisms of FBI excisions and withholdings and his review of them proved far more time-consuming than either of us had anticipated.

In reviewing his notes on the MURKIN files, Mr. Weisberg also consulted the FBI worksheets and augmented the criticisms of FBI deletions and withholdings reflected in those notes. For purposes of illustration he also made a page-by-page review of one entire section of the FBI Headquarters' MURKIN file, Section 60.

Mr. Weisberg's notes on the unjustifiable excisions and withholdings will be further augmented when he reviews his correspondence with FBI agents over these matters. After that is completed he will have a set of notes on the deletions and withholdings which is as comprehensive as is possible given the nature of his review, which is the only kind of review which he can possibly undertake. From this set of notes he will dictate his report, which will be typed up by his wife and then forwarded to me. Should it be necessary for me to edit or revise his report for greater clarity, I will do so. Hopefully all of this can be accomplished before too much longer.

If you wish any additional information, please do not hesitate to call or write me.

Sincerely yours,


James H. Lesar

cc: Mrs. Lynne K. Zusman
Mr. Harold Weisberg

1 suggestion that as soon as Mr. Weisberg has completed his
2 work, whatever that work is going to be, and Your Honor may
3 recall the Government's generous and unique offer made by
4 Deputy Assistant Attorney General William Schaffer to pay a
5 fee to Mr. Weisberg as a consultant for this work, which is
6 highly unusual --

7 I do think that Mr. Lesar's suggestion is perhaps
8 the most realistic one at this time, that as soon as Mr.
9 Weisberg completes his work, if Mr. Lesar would prepare papers
10 setting forth all of the issues that plaintiff feels are
11 still remaining in this case, then we can file cross-motions,
12 Government counsel, namely myself, has investigated from time
13 to time several specific problems that Mr. Lesar has raised
14 informally and I think the most appropriate way of getting
15 that information before the Court will be in the form of
16 sworn affidavits.

17 THE COURT: Very well. When do you think this will
18 come about?

19 MR. LESAR: Your Honor, there are two problems.
20 One, as I think you may be partially aware from the events
21 that have transpired publicly, Mr. Weisberg has been
22 exceedingly busy.

23 Since the November 23rd conference, he has received
24 approximately 75,000 pages of documents relating to both
25 the JFK and King assassinations, in other cases, not this one

JAMES H. LESAR
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TELEPHONE (202) 223-5587

March 28, 1978

Mrs. Lynne K. Zusman, Chief
Information and Privacy Section
Civil Division, Room 6339
U.S. Department of Justice
Washington, D.C. 20530

Re: Weisberg v. Department of
Justice, C.A. No. 75-1996

Dear Mrs. Zusman:

As you will recall, on the evening of January 15, 1978, you phoned me in response to a letter I wrote you on December 26, 1977 inquiring about the rate at which my client, Mr. Harold Weisberg, would be compensated for work done on this case. During our conversation you offered to pay him \$75.00 per hour for work on the project he has undertaken at your request. You stated that Morton Halperin had been paid at this rate for consultancy work which he had done for the government.

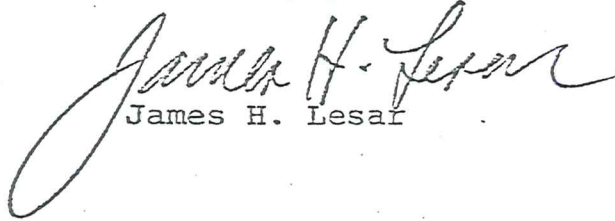
Mr. Weisberg ultimately agreed to accept this offer. Subsequently, in the latter part of January, I discussed with you the possibility of the Department's making an interim payment to Mr. Weisberg pending completion of the entire project. At your instruction, I wrote Deputy Assistant Attorney General William Schaffer a letter in which I described the nature of the project, what Mr. Weisberg had done and would do, and requested an interim payment in the amount of \$6,000 for work which Mr. Weisberg had already done.

The date of my letter to Mr. Schaffer was January 31, 1978. Approximately two weeks later I received a call from Dan Metcalf in which he stated that he had read my letter to Schaffer and become concerned that the rate of pay was excessive. He explained that he had had only a hurried conversation about it with you, and that he wouldn't be able to confer with you about it again until you returned from a trip the following week. I told him that by the time you returned, I would be in San Diego, so the matter was put off.

Weisberg's position is that he was offered \$75.00 an hour and he accepted it. He is quite angry that there is any question at all about the rate of compensation. Before he completes his project, I would ask that you state, in writing, whether the De-

ment intends to honor the offer which you made to Weisberg on January 15th. If we are going to have to litigate this issue, too, I feel that we are entitled to know that immediately, and Weisberg insists upon it.

Sincerely yours,


James H. Lesar



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

April 7, 1978

Address Reply to the
Division Indicated
and Refer to Initials and Number

LKZusman:pad

Tel: 739-2617

James H. Lesar, Esquire
910 Sixteenth Street, N.W.
Suite 600
Washington, D. C. 20006

Dear Jim,

Your letter of March 28, 1978 is quite disturbing because of your misunderstanding of our telephone conversation of January 15. My best recollection is that I re-iterated the agreement between the parties in this action that Harold Weisberg would prepare a specific list of deletions in the material released to him and that FBI would review the material and see if additional releases would be made. Because of your claim and Mr. Weisberg's that he has already spent a great deal of time in reviewing the released documents and drafting innumerable letters to the FBI, Deputy Assistant Attorney General William G. Schaffer had previously offered in November that Harold would be paid for time spent in this endeavor. You accepted this recommendation and the Court indicated in Chambers on November 21, 1977, that the Government's offer met with her enthusiastic approval. At no time prior to our March 15, 1978 telephone call was the rate of compensation to Harold discussed since it was not clear to me whether in fact Harold desired to follow through on this plan. At that time and indeed at the present moment, the government has still not received any list from your client.

The purpose of my phone call was to re-state the intention of the government to support this plan and by so doing, prevent it from being raised as an issue the following day at the hearing on your client's preliminary injunction motion in Civil Action No. 77-2155. When you asked me what hourly rate Harold would be paid as a consultant, my recollection is that I indicated that Deputy Assistant Attorney General Schaffer would have to make the final decision on the matter; that there was no precedent for this arrangement upon which to base such a determination;

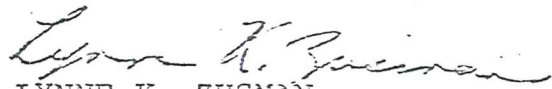


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and that the only instance I am aware of where a consulting fee was offered by the Civil Division to a non-attorney for performance of a specific task relating to an FOIA suit was a proposal to pay a National Security Expert \$75.00 an hour. I also stated that this proposal had not been adopted. I might add, the particular situation I had in mind involved a limited number of hours of work (12 hours).

I am very sorry that you misunderstood this conversation and that Harold is now upset. However, Deputy Assistant Attorney General Schaffer concurs in my judgment that the Department of Justice cannot agree to pay Harold at the rate of \$75 per hour for an unlimited number of hours of this work.

Yours very truly,



LYNNE K. ZUSMAN

Chief, Information and Privacy Section
Civil Division

them by phone took less than a morning.

6. In none of these cases am I asked how much I will charge. I never render a bill. I do not seek such consultancies. I am sought out.

7. I also render the same services without being paid. I do not represent that I ask \$75 an hour for such consultancies. But I do state that I am never paid at a lower rate and that in every case I am paid after I render the services. I have had no complaints.

8. Congressional committees also consult me from time to time. The staff director of one, who had never met me, insisted on coming from Washington early in the morning to drive me to Washington when I was hospitalized in 1975 in order to be able to consult with me as he transported me. The most recent occasion was when I spent the morning of May 8 of this year at the offices of a well-known Senate committee. For these services I also am not paid.

9. Because of the knowledge I have acquired, because most of what is written and spoken in the fields of my expertise is utterly irresponsible and generally not accurate, I regard it as an obligation to render these services so that the information that reaches people may be more accurate and more dependable.

10. In-camera on November 21, 1977, in this instant cause government counsel represented that what was asked of me could not be expected from the FBI. In another cause government counsel informed that judge that I know more about the assassination of President Kennedy and its investigation than anyone in the FBI.

11. I believe it is obvious that when the government can draw on all the services of the entire fabled FBI and all of the other divisions of the Department of Justice, there is no need to call upon me for any services unless the government (a) expects to get from me what it can get from nobody else or (b) has other purposes.



HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 18TH day of May 1978 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1978.



NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND