

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



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

MEMORANDUM TO THE COURT

At a hearing held on June 30, 1977, counsel for plaintiff sought to obtain an inventory describing the files of each FBI field office pertinent to this case, stating:

That would enable us to get a fix on what is involved and whether or not we would want a search made of the particular field office.

We are trying to eliminate to the degree possible material that is not relevant and that is not important to us.

(See Attachment 1, June 30, 1977 transcript, p. 32) In response, FBI Agent John Hartingh stated: "I personally do not have the authority, Your Honor, to agree to that on behalf of the Bureau." Ibid.

FBI Agent Hartingh also told the Court: "Well, from our point of view, from the FBI point of view, everything that pertains to the assassination of Dr. Martin Luther King is in one file, the Mercken (sic) file." (Attachment 1, June 30, 1977 transcript, p. 31)

No inventories of FBI field office files were produced at that time. In August, 1977, plaintiff entered into a Stipulation which called upon the FBI to process the files of seven field offices. Plaintiff's agreement to limit the search of field office files for King assassination records to MURKIN files was based on

the FBI's representation that all such records would be found in the MURKIN files.

Plaintiff continued to press for copies of FBI field office inventories. In 1978, Mr. Quinlan J. Shea, Jr., Director, Office of Information and Privacy Appeals, U.S. Department of Justice, wrote plaintiff's counsel that he had requested that the field office inventories that had been submitted in response to a December 9, 1975 directive from Headquarters be reviewed for release to plaintiff. In June, 1980, these inventories not having been provided to plaintiff despite his repeated efforts to obtain them, his counsel threatened to raise the issue in court if they were not provided by July 10, 1980.

On July 12, 1980, plaintiff finally received copies of these inventories. He immediately noted discrepancies between what he had received pursuant to the August, 1977 Stipulation and these inventories. His counsel informed the Department's counsel of this.

At the hearing held on August 15, 1980, plaintiff's counsel listed several specific files which were described in the inventories but which had not been provided pursuant to the Stipulation. As a result, the Court requested that plaintiff's counsel provide this list to the Court.

Subsequently, plaintiff has modified his list so as to eliminate matters of peripheral interest. In addition, on August 20, 1980, plaintiff and his counsel became aware that the Department had previously offered an explanation as to why "Sub H" of the Memphis Field Office MURKIN file was not provided. Accordingly, "Sub H" has been withdrawn from his list. The items not provided listed below by field office, together with the description of them provided in the inventories.

Atlanta

- File No. 44-2386-C: 1 vol., consists of xerox copies of transmittal letters of evidence to FBI Lab and single fingerprint section of FBIHQ
- File No. 44-2386-D: 1 vol., consists of xerox copies of FBIHQ Lab reports and single fingerprint section reports regarding evidence submitted
- 44-2386-SF-1: 1 vol., consists of data relative to cost data in investigating case
- 44-2386-SF-2: 1 vol., consists of newspaper articles relative to MURKIN case.

Chicago (File No. 44-1114)

- Sub A: 7 vols., 18 serials, contains reports captioned "James Earl Ray, AKA Fugitive, I.O. 4182, Dr. Martin Luther King, Jr.,--Victim, CR--Conspiracy and UFAC--Robbery" Re fugitive investigation 4/18/68-10/2/68

Los Angeles (File No. 44-1574)

- Sub G: cost data
- Sub H: reports from other offices, 13 serials.

Memphis

- File No. 100-4105: Martin Luther King, Jr., Security matters. Sub C: 2 vols., 66 serials, includes activities in Memphis area March and April
- File No. 149-121: "Threat to American Airlines and Dr. Martin Luther King, Jr., Memphis, Tenn., April 1, 1968 DAMV, 3 serials on threat to bomb plane on which King would return to Memphis

New Orleans

- File No. 157-10673: James Earl Ray, AKA, Dr. Martin Luther King, Jr., Victim; CR--Conspiracy; UFAC--Robbery; (MURKIN)" 72 items in exhibits envelope, 6 items in bulky section. Three sub-files, clippings, originals of FD 302s and inserts and copies of FD 302s and inserts marked for indexing. Main file, 18 sections, 1,308

serials, 72 1A exhibits, six bulky exhibits, besides three subs.

With regard to these New Orleans materials, plaintiff received two rather than six bulky exhibits. In addition, he does not know whether he received the "copies of FD 302s and inserts marked for indexing."

St. Louis (File No. 44-775)

Sub II: cost data

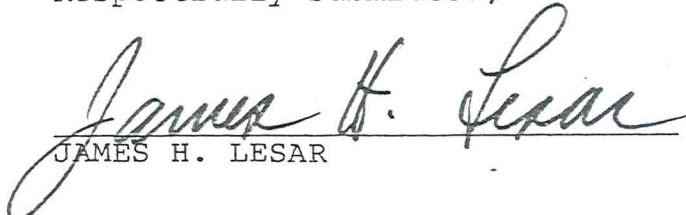
Washington (File No. 44-703)

Sub C: 5 vols., 51 items

The Washington Field Office inventory also discloses the existence of an auxiliary unit of the Washington Field Office which may have pertinent records which have not been provided plaintiff.

The foregoing list covers field offices that were designated by the aforementioned August, 1977 Stipulation. As noted above, prior to entering into the Stipulation, plaintiff sought to obtain field office inventories so he could select those files he wished to have searched and eliminate those he did not. The Savannah Field Office inventory describes its MURKIN file (File No. 44-1768) as including "some information concerning J.B. Stoner's defense of subject as his attorney and contacts with subject's brother, Jerry Ray." This is precisely the kind of information plaintiff is most interested in. His December 23, 1975 request expressly asks for records of this kind on J.B. Stoner and Jerry Ray. (Item 11 of 12/23/75 FOIA request) Had plaintiff obtained the Savannah inventory prior to the Stipulation, he would certainly have insisted upon these records being covered by the Stipulation.

Respectfully submitted,

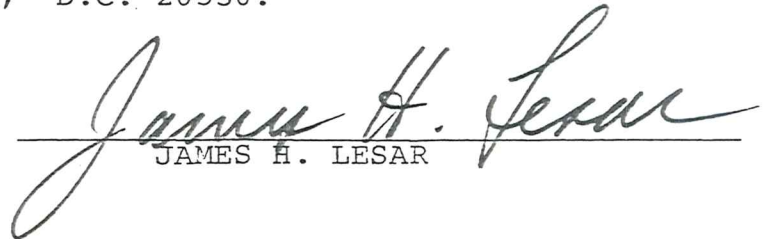

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of August, 1980,
mailed a copy of the foregoing Memorandum to the Court to Mr.
William G. Cole, Attorney, Civil Division, Room 3137, U.S. Depart-
ment of Justice, Washington, D.C. 20530.



JAMES H. LESAR

is a Xerox or otherwise, it doesn't make much sense. They certainly can comply with a thing that is large enough so that people can read it.

I am as tired of this case as anybody could possibly be and I would like to have as much of the information that is possible to be made available to the plaintiff given to him as rapidly as possible and I think that unless there is a very good reason for deleting anything at this late date, when it has been in the newspapers, in the Court records, been in all kinds of things, it seems highly unlikely to the Court that there is much that ought to be treated as secret or private or whatever at this stage, and it certainly seems that the matter could be dealt with, by putting people on it and getting finished with it.

MR. DUGAN: Your Honor, I don't know what more than two weeks could be a reasonable estimate of finishing the file and then an additional --

THE COURT: Well, incidentally, I understand that the request from the different field offices was for an index of what they had, a report on what they had, not to have a complete indication of the whole thing, I mean the whole turning over of all of the papers that are in different places.

There is no reason why they can't give them an index of these things, is there. He said that one of them

did it promptly and in proper order.

MR. DUGAN: Your Honor, could I have the agent reply? I can't respond to that.

THE COURT: Yes.

FBI AGENT: Index, is that it, an inventory of all the documents?

THE COURT: Well, they have asked for an inventory of what the files contain.

FBI AGENT: By September 1st, just the inventory.

MR. LESAR: We are talking about an inventory as distinguished from a Vaughn v. Rosen index of all documents.

FBI AGENT: Listing the documents and describing them?

MR. LESAR: Listing the files and describing the kinds of files and the number of the files.

FBI AGENT: You want each serial inventory?

MR. LESAR: Yes, each serial number is the way to do it.

FBI AGENT: Each serial number?

MR. LESAR: Yes.

THE COURT: It would not seem to be an impossible task. It isn't going over it by each page of the documents.

MR. LESAR: I said serial and I meant section. Each section. That is roughly 200 or 250 pages.

MR. DUGAN: Each page of that section?

MR. LESAR: No.

MR. DUGAN: Just tell how many sections there are?

MR. LESAR: Just indicate the section and --

FBI AGENT: The section, like 89 sections.

MR. LESAR: No, the subject matter of each section.

Just a general description of what the section contains.

FBI AGENT: I don't think -- no, we couldn't be accurate, you know, with something like that because the subject matter would be --

MR. LESAR: All we are asking for is --

FBI AGENT: The subject matter would be "Martin Luther King Assassination" and they may have a hundred sections in Memphis and part of it might deal with the arrest and part of it might deal with numerous items that are contained within each section and you mean just categorize each section and say it deals with such and such.

MR. LESAR: I guess what I am saying is that each field officer's files that would pertain to the King assassination. Now, not all of those would be in the Mercken file. There might be some for example in Memphis which would be the sanitation workers strike.

FBI AGENT: Well, from our point of view, from the FBI point of view, everything that pertains to the assassination of Dr. Martin Luther King is in one file, the Mercken file. That is what we have done, the facts of the assassination, the investigation and --

MR. LESAR: Everything which pertains to Mr. Weisberg's request is not in the Mercken file.

FBI AGENT: Right, because you have requests for other subject matters.

MR. LESAR: Fine, then what we want would be an inventory describing the files for each field office and pertaining to the request and approximately how many sections are involved.

That would enable us to get a fix on what is involved and whether or not we would want a search made of the particular field office.

We are trying to eliminate to the degree possible material that is not relevant and that is not important to us.

FBI AGENT: I personally do not have the authority, Your Honor, to agree to that on behalf of the Bureau. My understanding is that they want an inventory of the number of sections -- in other words, we have our files broken up into sections say of 200 or 250 pages in each section and the Martin Luther King assassination file in Memphis has 100 files.

The Invaders file consists of 18 sections. Something like that?

MR. LESAR: I don't know.

FBI AGENT: That is the type of information?

MR. LESAR: Well, I don't know --

FBI AGENT: I personally don't have the authority to