UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

Civil Action No. 75-1996

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

PRELIMINARY STATEMENT

On February 26, 1980, this Court ordered the Department of Justice to prepare a Vaughn v. Rosen index "justifying the deletions made on every 200th document released or to be released to the plaintiff." On April 25, 1980, the Department filed a vague motion for "partial" summary judgment[1/] which was accomapnied by an attempt at a Vaughn index. However, of the 147 documents sampled, 90 contained no excisions whatever, and the 57 which did contained no examples of the use of Exemptions 1, 2, 3, 5, 6, 7(A) and 7(F), all of which have been asserted in the more than 50,000 pages of records that have been released to plaintiff during the course of this litigation. Moreover, even the Federal Bureau of Investigations (FBI) conceded that the sample had revealed errors in the claims of exemption made, and plaintiff was able to establish the erroneous nature of many not admitted by the FBI.

As a consequence, on September 11, 1980, the Court issued an order denying defendant's motion for partial summary judgment and

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1/ Having persuaded the Court that there is no such thing as a motion for "partial" summary judgment, the Department now--praise be Orwell!--refers to the motion for partial summary judgment it filed on April 25, 1980 as a "motion for summary judgment." (Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment, p. 1)

ordering the Department to prepare a new Vaughn index. As will be shown below, the new Vaughn has the same defects as the old. This requires both that defendant's motion for summary judgment be denied and that a reprocessing of the MURKIN records be carried out along the lines recommended by Mr. Quinlan J. Shea, Jr., Director of the Office of Privacy and Information Appeals, in the testimony he gave in this case on January 12, 1979.

ARGUMENT

I. DEFENDANT'S SUPPORTING MATERIALS FAIL TO JUSTIFY THE RELIEF SOUGHT

Defendant seeks the dismissal of all of plaintiff's claims "except for claims of attorney and consultancy fees." (Proposed Order submitted by defendant) The memorandum of points and authorities submitted in support of defendant's summary judgment motion dwells almost exclusively on the issue of excisions. It fails to address other pertinent issues that have been raised repeatedly in this case, such as whether there has ever been a proper search for materials responsive to plaintiff's requests, including a search of all "see" references and all items of his requests, or whether all responsive records have been produced by the Civil Rights Division (CRD) of the Department of Justice. These are fundametnal issues which no agency and no Court can ultimately avoid. As the Court of Appeals recently stated, in order for an agency to prevail on summary judgment in a Freedom of Information Act case, "it must demonstrate that . . . all requested documents in its possession had been both unearthed and unmasked." Weisberg v. United States Dept. of Justice, ____ U.S.App.D.C. ____, ____, 627 F.2d 365, 368 (1980).

Even if the Department could prevail on all claims of exemption, it would still have to face these other issues. But given

the fact that the Department is forced to release additional materials every time it does a Vaughn sampling, it is ludicrous to contend that summary judgment should now be granted, or to believe that if granted it would be upheld in the Court of Appeals.

II. THE DEPARTMENT'S VAUGHN INDEX CANNOT JUSTIFY EXCISIONS MADE ON DOCUMENTS NOT INCLUDED WITHIN THE SAMPLING

More than 50,000 pages of records have been released in this case. In the Headquarters MURKIN records, which consist of approximately 6,000 serials, there are more than 4,000 serials which contain excisions purportedly made on Exemption 7(C) grounds, and more than 1,000 serials in which 7(D) was cited as the basis. (See May 28, 1980 Affidavit of James H. Lesar, ¶3) The Department, having made a sampling that amounts at most to one-half of one percent of the documents released, argues that all of its claims of exemption should be upheld.

The first difficulty with this is that the Freedom of Information Act requires the agency to meet the burden of demonstrating entitlement to an exemption. Both the Act and the case law also require that the agency demonstrate that there are no segregable non-exempt portions withheld. As a general rule the agency must make a particularized showing that the information withheld is within the exemption claimed and that its release will cause the kind of harm that Congress sought to protect against. Without such a showing there is no basis upon which a court may conclude that the exemptions claimed have been properly taken. Here no showing at all has been made with the exception of the few documents for which a justification has been undertaken in the Department's Vaughn sampling, and even that shows that a large quantity of materials have been unjustifiably withheld.

Another difficulty is that the Vaughn sampling, even as augmented, does not include a single example of the use of Exemptions 3, 5, 6, and 7(F), all of which have been used to withhold information in this case. (See May 14, 1980 Weisberg Affidavit, ¶101) Certainly the Court cannot sustain claims of exemption for which not even a single Vaughn justification has been offered. And it must be noted that while the new Vaughn did provide examples of the uses of Exemption 1 and 7(A), for the first time, the result can hardly be used to support defendant's motion for summary judgment. The only example of 7(A) in the new sample was in fact dropped, as were several of the Exemption 1 claims.

III. THE DEPARTMENT'S VAUGHN SAMPLE SHOWS THAT ITS WITHHOLDINGS IN THIS CASE CANNOT BE JUSTIFIED

In opposing defendant's April 25, 1980 motion for partial summary judgment, plaintiff stated:

> The Department's memorandum in support of its motion for partial summary judgment acknowledges that the FBI now admits to "two errors in the original exemption claims." (Memorandum, p. 2) Actually, more errors than this are admitted to in the affidavit of Martin Wood. However, in a sampling of only one out of every 200 documents, this alone would indicate that more than 400 errors were made in the processing of records in this case. This is not an inconsequential number of wrongful claims to exemptions.
>
> Moreover, the FBI now in effect concedes that it cannot justify the excision of the names of FBI agents from these records. This vindicates the verbal order that this Court issued in June, 1976, that such excisions should not be made unless the Department was prepared to brief the issue. Although the Department never briefed the issue, the FBI continued to excise the names of FBI Special Agents and other law enforcement officials. The result is that literally thousands of these excisions were made. Yet if the Department's motion is granted, there will be a de facto ratification of these claims, even though they were made in contempt of this Court's verbal order, and even though the FBI now says it

has changed policy.

What was true then is even more true now. Defendant has been forced to admit that more of its exemption claims cannot be sustained, and as a consequence it has had to release significant amounts of important information previously withheld. For example, in a single document, 34A, defendant has been compelled to release three whole paragraphs that were previously withheld. This document, a September 3, 1976 memorandum from R.J. Gallagher to Deegan, was one of several purportedly classified documents called to the attention of the Court by the June 26, 1978 affidavit of James H. Lesar. A comparison of the earlier version with the present version shows that there is nothing in the newly released content that ever qualified for national security classification, and that what was withheld could be embarrassing to the Department and the FBI. (January 6, 1981 Weisberg Affidavit, ¶89) (The earlier version is Exhibit 12 to the June 26, 1978 Lesar Affidavit, refiled herewith; the latest version is Exhibit 1 to the January 6, 1981 Weisberg Affidavit)

The Department has also been compelled to release information previously withheld under Exemption 7(C) in documents 36A and 39A, including the previously withheld name of Father Groppi.

Moreover, critical scrutiny of the new Vaughn documents shows that a considerable amount of material that is being withheld under Exemptions 7(C) and 7(D) cannot possibly qualify for exemption, even though the FBI continues to maintain that it does. This includes the withholding of the names of, and/or information pertaining to, such persons as Frederick John Schwartz (deleted in document 25A), Eloise Witte (deleted in Document 27A), Jim Garrison (Document 40A), Jimmie Delton Garner (Document 42A), Jerry Ray (Document 52A), Marjorie Fetters (Document 53A, and the Powell brothers (Document 111A) (See January 6, 1981 Weisberg Affidavit, ¶¶134-135, 149, 152, 157-159, 175) Yet all of these withheld names

have been officially released in connection with the King assassination investigation, and several of them are principal characters in it and, as such, are not likely, absent extreme circumstances not suggested by the Department's affidavits, to have a protectible privacy interest in a historical case such as this.

The May 14, 1980 affidavit of Mr. Harold Weisberg which was submitted in opposition to the Department's April 25, 1980 motion for partial summary judgment, and which is incorporated herein by reference, demonstrated time and again that there is no basis for many of the excisions that the Department attempted to justify in its first Vaughn index. Mr. Weisberg's January 6, 1981 affidavit, filed herewith, shows that its second Vaughn index is equally defective. While there is no need to repeat all of the many examples which Weisberg has given in his affidavits, some of the more salient and instructive ones will be noted in the context of the discussion of specific exemption provisions which follows.

Exemption 1

As noted above, the Department has been forced to admit that much of the purportedly classified information it has been withholding under the auspices of Exemption 1 must be released. In addition, however, the MacDonald affidavits fail to establish that the materials which remain withheld are properly withheld under Exemption 1.

Exemption 1 protects information that is "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy . . ." 5 U.S.C. § 552(b)(1)(A). (Emphasis added) The MacDonald affidavits do not state that the information being withheld from Weisberg under Exemption 1 is even related to national defense or for-

eign policy. Some of the information being withheld under this guise clearly relates not to national defense or foreign policy but to the FBI's COINTELPRO-type harrassment of Dr. King and the domestic political movement he led, the Civil Rights Movement. This is the subject matter involved in Document 34A, some of which remains withheld under Exemption 1.

The Church Committee (the Senate Select Committee on Intelligence Activities) found that there was no evidence that Dr. King had ever been a member of the Communist Party or espoused its philosophy or followed a party line. It found, to the contrary, that the FBI's efforts were focused upon trying to destroy Dr. King and his reputation rather than upon preventing any alleged danger to the national security. Its Report states that "[t]he FBI's COMINFIL investigation appears to have centered almost entirely on discussions among Dr. King and his advisers about propsed civil rights activities rather than on whether those advisers were in fact agents of the Communist Party." Indeed, rather than trying to discredit the advisers who were alleged to be communists, "the Bureau adopted the curious tactic of trying to discredit the supposed target of Communist Party interest--Dr. King." Report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Report), Book III, "Dr. Martin Luther King, Jr. Case Study, p. 85.

In addition, a contemporaneous record shows that where the original records pertaining to the FBI's campaign against Dr. King were classified at all, it was done not in the interest of protecting national defense or foreign policy but "to minimize the liklihood that this material will be read by someone who will leak it to King." (1/13/64 memorandum from Assistant FBI Director William C. Sullivan to Alan Belmont. Quoted in Church Report, Book III, pp. 124-125)

Thus there is no reason to believe that some of the material withheld under Exemption 1, including the still deleted segment of Document 34A, can meet the threshold requirement that it must be kept secret "in the interest of national defense or foreign policy." With respect to this material there is no question of national defense of foreign policy. What was involved was domestic politics.

Another flaw in the MacDonald affidavits is there failure to comply with Section 3-303 of Executive Order 12065, which provides:

> 3-303. It is presumed that information which continues to meet the classification requirements in Section 1-3 requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to [an approriate official]. That official will determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

Instead of making the balancing determination required by the Executive order, MacDonald asserts only that: "I have determined that the information contained in these documents does not give rise to a declassification review pursuant to EO 12065, 3-303." September 26, 1980 affidavit of Donald R. MacDonald, III(B). MacDonald fails to state the basis upon which he made this determination. He does not refer to any criteria under which this determination is to be made. Obvioiusly, the historical importance of these materials is a factor both requiring the balancing specified by §3-303 and favoring its disclosure in accordance therwith. It this case does not qualify for such a balancing, the provision is meaningless.

Subsequent to the execution of MacDonald's affidavit the Department has formally promulgated regulations implemention E.O. 12065. Section 17.27 of the Department's Rules (28 C.F.R. Part 17), concerns the balancing test required by the Executive Order. It

provides, in pertinent part, that:

> (b) When determining whether the public interest in disclosure outweighs the damage to the national security that might be reasonably expected from disclosure, the head of the Office, Board, Division or Bureau concerned should consider whether there exist any special circumstances so that the disclosure of the information would result in identifiable and significant benefit to the public. Such could include:
> (1) Saving of human life;
> (2) Avoidance of hostilities between sovereign powers;
> (3) Accurate and appropriate public analysis of issues of national importance.

Thus the Department's own regulation's require that a balancing be made pursuant to 28 C.F.R. § 17.37(b)(3), at a minimum, and this balancing must be made of all materials which the Department has withheld under Exemption 1 in this case.

Exemption 7(C)

Exemption 7(C) excepts information in investigatory files compiled for law enforcement purposes to the extent that the disclosure of such information would "constitute an unwarranted invasion of personal privacy." Because exemption 7(C) requires that personal privacy interests be balanced against the public interest in disclosure, there is no per se coverage. Congressional News Syndicate v. United States Dep't of Justice, 483 F.Supp. 538, 543-544 (D.D.C. 1977. (Cited with approval by the United States Court of Appeals for the District of Columbia Circuit in Common Cause v. National Archives and Records Service, 48 U.S.L.W. 2734 (1980). The agency must show that confidential identity information such as names, addresses, etc., was properly assured of confidential status. This is not possible where, for example, witnesses were told that they would be expected to testify in public hearins about the matter. Poss v. NLRB, 565 F.2d 654 (10th Cir. 1977) Nor does Exemption 7(C) authorize withholding of routine information concerning persons arrested or indicted. Tennessean Newspaper, Inc.,

v. Levi, 403 F.Supp. 1318 (M.D.Tenn. 1975).

In this case, including in the latest Vaughn sample, Exemption 7(C) has been asserted inconsistently and for all kinds of materials not properly withheld, including the names of persons already officially released and the names of persons who are major "players" in the King assassination investigation.

In his letter of October 26, 1976 to plaintiff's counsel, Mr. Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, Department of Justice, wrote that: ". . . no 7(C) excisions can be upheld unless a specific reason can be articulated for doing so, sounding in personal information essentially unrelated to the assassination of Dr. King, or to the F.B.I.'s investigation of the crime." Based on this and on his personal examination of every excision from five FBI field office reports comprising 856 pages, Mr. Shea expressed thebelief that on reprocessing of these documents, "I believe that there will be relatively few excisions which will remain."

Unfortunately, the FBI continues to disregard the opinion of the Department's FOIA expert, Mr. Shea, and seeks to tough it out. The results are ludicrous. For example, in both Vaughn samplings the FBI has withheld the names of Claude and Leon Powell under 7 (C). Yet their names have been released by the FBI in other documents and publicized by countless TV news stories, as well as in the print media. One of the Powells was even cited for contempt because he refused to testy before the House Select Committee on Assassinations. (May 14, 1980 Weisberg Affidavit, ¶¶210-212; January 6, 1980 Weisberg Affidavit, ¶175)

In general it may be said that the FBI's privacy claims are highly inconsistent and that they reflect its prejudices and dislikes, particularly its often racist attitutes. Its Exemption 7(C) claims are therefore, highly suspect.

There is a high degree of public interest in most information contained in records on the assassination of Dr. Martin Luther King, Jr. In order to properly evaluate the manner in which the FBI investigated his murder, it is important that much of the information now being held under a claim of personal privacy be obtained. For example, there is obviously a strong public interest in learning the names of the two men who were registered at the William Len Hotel in Memphis, "appearing and leaving under mysterious circumstances at the time of the assassination." Yet although the names of many suspects have been disclosed, as well as withheld, theirs have been withheld, as well as released. (May 14, 1980 Weisberg Affidavit, ¶74)

Exemption 7(D)

As with Exemption 7(C), the FBI has excised much information under 7(D) which is public information rather than confidential information, as well as information which would not qualify under this exemption even if it were not already public. A particularly egregious example of the former is the attempt to justify the excision of the identity of former Memphis policeman Marrell McCullough. Mr. Weisberg appealed the withholding of his name in 1977. In his testimony to this Court in 1979, Mr. Shea testified that Weisberg would be given the Marrell McCullough file. Prior to that, Mr. McCullough had testified before the House Select Committee on Assassinations. (May 14, 1980 Weisberg Affidavit, ¶¶201-206) Despite this, the FBI is still trying to justify the excision of his name.

It is apparent that the FBI has tried to stretch 7(D) far beyond the limited purposes it was intended to accomplish. For example, in Document 20 of the first Vaughn sample, 7(D) is used for a person who was a source for the Los Angeles Times, not the FBI. In addition, his name appears to have been disclosed in other

records the FBI has released. (May 14, 1980 Weisberg Affidavit, ¶182) The same misuse of this exemption is made in Document 31A of the new Vaughn.

In addition to the improper use of 7(D) made evident by the few documents contained in the Department's Vaughn sampling, there is other evidence which is available to show its misuse. For example, the copy of MURKIN HQ serial 2622 which was given to Weisberg has a sentence deleted from it that is quoted in Volume XIII of the Hearings of the House Select Committee on Assassinations. That serial is a May 1, 1968 directive to four FBI field offices instructing them to conduct surveillance on James Earl Ray's relatives in their respective territories. One sentence deleted from the copy given Weisberg reads as follows: "You should also obtain all long distance telephone calls from their residences for period April 23, 1967 to the present time." Since the deleted sentence neither discloses a confidential source nor information obtained from a confidential source, 7(D) was improperly invoked. It should be noted that the excised information is very important and very much in the public interest to have, and that it also indicates the possible existence of records which should have been provided Weisberg but which have not been. (See May 28, 1980 Lesar Affidavit, ¶4, Attachments 1-2)

This and other evidence indicates that the FBI has used 7(D) in this case for corporate and institutional sources of information. For example, it has been used to withhold the name of a company that provided information to the FBI, the Superior Bulk Film Co. (May 14, 1980 Weisberg Affidavit, ¶214) This, too, is a misuse of this exemption.

Exemption 7(E)

The Departments first Vaughn index states that this exemption was invoked for Document 91. The legislative history is explicit

in stating that this exemption is not to be invoked for "routine techniques and procedures already well-known to the public." H. Rep. No. 1380, 93rd Cong., 2d Sess. 12 (1974). However, the Wood affidavit fails to state that the technique sought to be protected in this document is not already well-known to the public. Wiretapping, bugging, mail interceptions and the like are investigative techniques that are already well known to the public. (May 14, 1980 Weisberg Affidavit, ¶¶93-98)

IV. MATERIAL FACTS ARE IN DISPUTE PRECLUDING SUMMARY JUDGMENT

It is well established that a motion for summary judgment is properly granted only when no material fact is genuinely in dispute, and then only when the movant is entitled to prevail as a matter of law. Fed.R.Civ.P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Bouchard v. Washington, 168 U.S.App.D.C. 402, 405, 514 F.2d 824, 827 (1974); Nyhus v. Travel Management Corp., 151 U.S.App.D.C. 269, 271, 466 F.2d 440, 442 (1972). In assessing the motion, all "inferences to be drawn from the underlying facts contained in the [movant's] materials must be viewed in the light most favorable to the party opposing the motion." United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). The movant must shoulder the burden of showing affirmatively the absence of any meaningful factual issue. Bloomgarden v. Coyer, 156 U.S.App. D.C. 109, 113-114, 479 F.2d 201, 206-207 (1973). That responsibility may not be relieved through adjudication since "[t]he court's function is limited to ascertaining whether any factual issue pertinent to the controversy exists [and] does not extend to the resolution of any such issue." Nyhus, supra, note 32, 151 U.S. App.D.C. at 271, 466 F.2d at 442. These principles have recently been reaffirmed by the Court of Appeals for the District of Colum-

bia Circuit in Weisberg v. United States Dept. of Justice, ____ U.S.App.D.C. ____, 627 F.2d 365 (1980).

In this case many issues of material fact remain in dispute. Most notably, this includes the question of whether a search has been made for most of the items of plaintiff's requests and the question of whether the Civil Rights Division of the Department of Justice has produced all the records it has within the scope of plaintiff's requests. For these reasns, summary judgment is in appropriate at this juncture.

CONCLUSION

Early in this case Mr. Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals submitted an affidavit to the Court stating that:

> . . . Attorney General Levi and Deputy Attorney General Tyler have directed that all non-exempt records in these files of public and/or historical interest are to be released, together with every exempt record that can possibly be released as a matter of discretion.

This has been designated a case of historical interest, but the promise that it would be accorded that treatment has been broken. Unfortunately, this is not the only case of plaintiff's in which the Department has failed to live up to the standards set by the Attorney General and his subordinates. However, that case is now moving forward again because the Associate Attorney General has found that significant amounts of substantive information were withheld under Exemptions 1, 7(C) and 7(D). (See copy of letter of John H. Shenefield to James H. Lesar attached as Exhibit 2 to January 6, 1981 affidavit of Harold Weisberg) The wisest way to bring this case to a proper conclusion, one that will not involve sanctioning wrongful withholding or result in further delays and appeals, would be for the Court to order that Mr. Shea be placed in charge of handling this case. Plaintiff intends to file a

motion to that effect shortly.

Respectfully submitted,

JAMES H. LESAR
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Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of January, 1981, mailed a copy of the foregoing Plaintiff's Opposition to Defendant's Motion for Summary Judgment to Mr. William G. Cole, Civil Division, Room 3137, U.S. Department of Justice, Washington, D.C. 20530.

JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

STATEMENT OF GENUINE ISSUES
PURSUANT TO LOCAL RULE 1-9(h)

Pursuant to Local Rule 1-9(h) plaintiff adopts and incorporates the May 28, 1980 and January 6, 1981 affidavits of Mr. Harold Weisberg and the two consultancy memoranda of Mr. Weisberg on file with the Court in this case, as his statement of Genuine Issues in Dispute.

James H. Lesar

JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	:	
Plaintiff,	:	
v.	:	C. A. 75-1996
DEPARTMENT OF JUSTICE,	:	
Defendant.	:	

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road (Route 12), Frederick, Maryland. I am the plaintiff in this case.

1. Defendant's newest Motion for Partial Summary Judgment, undated in the copy provided to my counsel, was delayed in reaching me because, in violation of the understanding reached at the latest calendar call I was able to attend, Department counsel did not send a copy to me. This is consistent with Department counsel's steadfast effort to obfuscate, stall and misrepresent in this litigation and to harass me. One of the means of accomplishing these improper objectives was to abrogate the prior agreement to provide me with copies of filings.

2. This past September I was hospitalized for arterial surgery. From the groin to the left knee, the artery in my left thigh is now plastic. While I was recovering from this surgery, I suffered additional venous thrombophlebitis, an illness for which I was hospitalized in 1975. The day I was discharged from the hospital, blood clots broke loose and I was forced to return for additional surgery to remove these clots. Those below the left ankle are inaccessible. My total hospitalization was for a month. As a consequence of these complications, I am even more severely limited in what I can do. I cannot stand still, can walk for brief intervals only and am never without varying degrees of discomfort. My sleeping is interrupted constantly. I have not been able to sleep for more than 30 to 45 minutes before these discomforts awaken me. I must move around frequently to promote some circulation and prevent puddling of the blood in the left leg and foot. This prevents continuous work and interferes with concentration. It is not

possible for me to search my own files. I have no one helping me who can make these searches for me.

3. This newest Motion for Partial Summary Judgment and its attachments, like those before it, are not made in good faith. They do misrepresent and misstate. They do not address all the many material facts that have been in genuine dispute throughout this long case.

4. We heard the cry "Summary Judgment" at the very first calendar call almost five years ago, despite the fact that no real effort at compliance had been made. Prior to that first calendar call, as Department records I have obtained reflect, on the operating level the FBI and its counsel were busily engaged in misleading and deceiving higher authority into believing that the requirements for summary judgment had been met when, in fact, they have never been met.

5. These requirements cannot be met because the very first, the initial searches, have not yet been made. They are not attested to.

6. The defendant's method in this case has been to ignore all the evidence I have provided. I recall no serious effort to rebut any of it.

7. All this evidence, which consists of my many affidavits and testimony and the testimony of the Department and FBI personnel, is ignored in the Department's newer Motions for Partial Summary Judgment.

8. As I have alleged before without contradiction, Department counsel is aware of pertinent files not searched and of the fact that there has been no search at all to comply with most of the Items of my requests. He knows that pertinent records do exist and remain withheld. One example, included in my prior affidavits, is information pertaining to spectrographic and neutron activation testing (April 15, 1975, request, Item 2). He has ignored written reminders by my counsel, copies filed with the Court.

9. Admission that spectrographic plates and neutron activation information remain withheld was adduced on deposition from John W. Kilty, the very same FBI Special Agent who earlier provided untruthful attestation to compliance.

10. On deposition present Department counsel represented both Kilty and Supervisory SA Thomas Wiseman, who also provided affidavits I, without dispute, characterized as untruthful. Wiseman testified that Kilty had made the searches required by other Items of this request, whereas Kilty testified that he had not.

Department counsel therefore knows that Wiseman's sworn representations are not truthful and that those searches still have not been made.

11. I have identified files that must be searched for compliance with my requests but Department counsel has refused to have those files searched. Defendant has never searched those files even though their pertinence is obvious and undisputed. Search of "see" references remains refused even after the Court suggested it. The depositions established the existence of pertinent "see" references.

12. One of many examples of records not searched are those of the then "Crime Records Division" and the "94" files. Instead of making these required searches, the Department resorts to gross and obvious untruths and adheres to them even after I prove them to be false. Item 7 of the April 15, 1975, request, in compliance with which no search was made or attested to, requests copies of information provided to other writers. The FBI and the Department, knowing better, claim that no such information was provided. They persist in this after I produced FBI records stating that, in fact, information was provided to Jeremiah O'Leary. O'Leary stated publicly, as my uncontested affidavit reports, that the FBI provided the information for his Readers Digest article. (That article, uncontestedly, had much to do with the avoidance of a criminal trial and the Ray guilty plea.) More than two years after I provided this additional proof, it remains uncontested. The defendant has not withdrawn his sworn untruths, the search has not been made and the information remains withheld. Instead, the false claim that material facts are not in dispute is repeated, to procure an unjustified summary judgment.

13. Not even false affidavits have been filed to claim that good faith searches were made to comply with all the Items of my December 23, 1975, request and, in fact, no search has yet been made to comply with those Items.

14. Defendant and defendant's counsel now pretend that the earlier Motion for Partial Summary Judgment, amended by the present one, is without dispute. In fact, under date of May 14, 1980, I provided a long, detailed and abundantly illuminated affidavit rebutting and disproving those earlier claims. The representation that the prior Motion and its attachment, as for example under Argument on page 2, is not made in good faith. It is made without any effort having been made to rebut my May 14, 1980, affidavit. As long as that affidavit is unrebutted -

and it cannot be rebutted - then it is certain that material facts remain in genuine dispute.

15. I have never at any time withdrawn or abandoned my requests nor have I in any way agreed to any of defendant's attempted rewriting of them. I have protested these attempted rewritings, often to the Court and prior to the first calendar call to the Deputy Attorney General. (He never responded.)

16. Defendant has not disputed that my actual requests have not been complied with and that searches have not been made to comply with my actual requests.

17. The information requested is embarrassing to defendant, to more components than the FBI. The reason it is not provided is because it is embarrassing and because there remains the possibility of a substantial challenge to the official "solution" to that most heinous of crimes, the assassination of Dr. King.

18. When in 1976 it became apparent that false representations were being made to the Court and that Department counsel was party to the successful effort to deceive and mislead the Court and deny me the information I seek, I so informed the Court. In his present Motion, Department counsel remains part of the long and continuing series of official efforts to "stop" me and my work, the word actually used in FBI records, copies of which I provided. (The Court then found that my 1969 requests also are pertinent, a fact now again misrepresented by present Department counsel, as in #2 of the Statement of Material Facts.) The Court found what I stated to be unwelcome and appeared to be shocked by it. However, it remains without dispute and I was never cross-examined about it, although I was cross-examined.

19. On occasions my proofs of false representations under oath have been dramatic, as when the Court, after examining overt fakery presented by Department counsel and attested to by SA Horace Beckwith, stated it did not want to see him in this case again. It is significant, however, that his false representations have not been withdrawn or replaced and that true copies were not provided in substitution for the fakes he presented. (The Court had directed the FBI to respond to a memorandum based on my letters to the FBI in which I noted noncompliance and unjustified claims to exemption. Beckwith filed false statements with documents that were not authentic. I refuted his affidavit in an affidavit that remains

uncontested. At the very least, all that is involved in the Beckwith affidavit is in dispute.)

20. Difficult and costly as it is for an FOIA requester to provide these kinds of proofs, I have done it throughout this long and successfully stonewalled case, without ever once being refuted. The most recent illustration is my May 14, 1980, affidavit in opposition to the earlier part of the Motion for Partial Summary Judgment.

21. One of the continuing dirty-works that are indistinguishable from the FBI's Cointelproing and serve the identical purpose has been withheld from the Court by Department counsel. It pertains to the fee waiver. My request was stonewalled for a long time, despite the prodding of the Court. The matter was finally resolved when, after my C.A. 77-2155, the Department awarded me a fee waiver pertaining to King and President Kennedy assassination records. The case record reflects that there is a fee waiver. The Court was not notified when it was revoked. According to documents I obtained, this was done on the initiative of present Department counsel, who also expected that it would inhibit me and reduce materially the information I could seek.

22. On November 10, 1980, I filed an appeal pertaining to what is not in litigation. (It has not been possible for my counsel to do all the work required for the perfecting of the appeal pertaining to matters in litigation.)

23. I requested that copies be provided to all interested parties in the Department. This is because once again I had to allege untruthfulness and the overt and deliberate fabrication of what is neither true nor even reasonable. As of today I have had no response and not even pro forma protest or complaint from present Department counsel. His fabrications include the baseless allegation that I seek only a personal memorial, have created it and use FOIA for this purpose rather than the pursuit of my own inquiry, now one of 17 years of diligent, unpaid, pro bono effort, one recognized by his own client/employer as without equal.

24. His stratagem, without question, is an effective means of carrying forward the FBI's scheme of more than a decade, of "stopping" me and my work. It also assures greater costs, the prolongation of litigation and, if not overturned, new litigation, which means still other and unnecessary costs.

25. Nobody in the Department has claimed that I erred in any way in alleging his fabrication of untruth, and that Department counsel had no way of knowing anything about what he told the Associate Attorney General in order to obtain approval of the revocation of the fee waiver. (He did not allege I do not meet the prerequisites.)

26. In addition to the extensive misleading and misinforming of the Associate Attorney General, as is set forth in my appeal, he also was told that no records remain to be provided in this instant cause. Department counsel has personal knowledge that this statement is not truthful, regardless of his many false pretenses, including to this Court. Since then he may have taken steps addressed at providing costly pertinent records that he personally has assured would be withheld to now.

27. On many occasions I have appealed the withholding of information pertinent to my request for the results of spectrographic and neutron activation testing. From prior experience (in C.A. 2301-70 and C.A. 75-226) I know that these still withheld records can be costly. As stated above and in other affidavits over a period of years, the spectrographic plates and what I understand are neutron activation analyses printouts remain withheld.

28. More than two years ago, in response to my repeated appeals in both cases, Mr. Shea took this up with the FBI. He later informed me that it had agreed to provide duplicates of the spectrographic plates without charge because the average person cannot afford what the FBI charges for them. They have not been provided. My counsel wrote Department counsel about this long ago, when Department counsel expressed a preference for what he called the informal method, of writing letters. In December Mr. Shea phoned me to ascertain my recollection of what the FBI agreed to more than two years ago because he had been asked by Department counsel.

29. Department counsel now also represents the FBI in C.A. 75-226, a JFK assassination case in which those spectrographic plates remain withheld. In 1975 my counsel and I were told that the FBI charges $50.00 each for these relatively small pieces of film.

30. When he brought about a revocation of the fee waiver outside the

Court while applying it to this case, Department counsel was personally aware of the continued withholding of this spectrographic and neutron activation material. The case record leaves no doubt that I cannot afford to pay $50.00 each for small pieces of film when my only regular income is Social Security and I have heavy medical expenses, not all of which are covered by insurance. (The cost of the recent hospitalization referred to above is approximately $20.000.00.)

31. As long ago as the depositions in which he represented the witnesses employed by defendant, Department counsel had personal knowledge of the existence, pertinence and withholding of this material. He has not provided it, has not disputed that it exists and is pertinent, has ignored reminders, yet unashamedly pretends otherwise in his Motion for Summary Judgment.

32. Instead of what he pretends, to be seeking a resolution of existing causes for the continuation of this litigaton, Department counsel assures prolongation by presiding over continuing noncompliance. Had this not been his intent, he could and would have made an exception of this litigation in his fee waiver revocation ploy rather than telling the Association Attorney General what is not true, that nothing remains to be provided in it.

33. My many prior affidavits, the memorandum the Civil Division asked a pre-law student to prepare, based on her selections from my letters to the FBI, my consultancy report, the depositions, and a very large volume of appeals filed with Mr. Shea after the Court requested that he be involved in this case, all hold countless and the most genuine questions of material fact of which defendant and Department counsel are well aware.

34. I address the misrepresentations made about the Stipulation below. Here I state that along with the student's memo and my consultancy report the Department and the FBI were to have responded to all the questions I raised. This is stated explicitly in records I obtained under discovery at the time of the depositions. Department counsel withheld them for a long time, until it was too late to use some in the depositions. They are included in my subsequent and undisputed affidavits. I did write the FBI about the records provided under the Stipulation. It was required to respond. It has not. The consultancy was for the Civil Division. It has yet to have a word to say about all the questions of material fact in dispute identified and stated in that lengthy report.

35. Each of these matters represents bad faith and wrongful intent. Civil Division asked for the student's memo, referred to above, then ignored it, finding it impossible to confront what I had written to the FBI. When the Court required that it be addressed, the falsely sworn Beckwith affidavit was sent - at a time when it was a safe assumption that it would not reach me until after the scheduled calendar call. By accident I did receive it. I proved it was falsely sworn and the Court banished Beckwith, but his falsely sworn affidavit has not been replaced. It is disputed by my affidavits and these disputes have not been addressed or eliminated. (Except that in his testimony as defendant's own expert, Mr. Shea supported me and testified that there is extensive improper withholding.) That the consultancy was no more than another device for stalling this case and wasting me is established by the Department's failure to use it or to respond to it. I also remain defrauded of the compensation I was to have received.

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES MISSTATES AND MISREPRESENTS

36. The Memorandum begins with the deliberate misrepresentation that has been corrected over and over again, only for Department counsel to persist in his misrepresentation. He makes the false pretense that the Court's Order of February 26, 1980, was addressed to all files. In fact, it addressed those captioned MURKIN only.

37. He claims that where no search was made none need be made merely because until now defendant has gotten away with incomplete and inadequate searches and compliance.

38. The Memorandum also argues that, if the Department can pull off a fraud, it is exempt from compliance with the Act when the fraud is proven.

39. One further search directed by the Court is in response to my testimony, based on the FBI's inventories of its field office records pertaining to its campaign to ruin Dr. King. This testimony was not cross-examined. It is not disputed. It also is not recognizable in anything filed by defendant. See Paragraphs 42-48 and 212-220 below.

40. The Memorandum states that all the questions I raised are "addressed in detail in the affidavit of Special Agent John N. Phillips." This simply is not true. While Phillips has not so identified himself, he appears to be the FBI's "Weisberg" case agent. He is careful not to utter so gross a misstatement in his

Second Affidavit. He deceives without this kind of lie.

41. One of the questions I raised, reading the Savannah Field Office's description of its own file, reflected deliberate noncompliance with the surveillance Items of my December 23, 1975, request, Items 11 and 12. Over and over again I informed the Court, prior Department counsel and FBI case agents and Mr. Shea that I have knowledge of such surveillances and that no proper search had been made. My affidavits so stating are not refuted. Four of the persons listed in these Items are J. B. Stoner who had been counsel to James Earl Ray and his brother John, and brother Jerry Ray. The FBI's own description of the Savannah file I identified in my August 15, 1980, testimony states explicitly that it is the repository of pertinent surveillance information. The Phillips affidavit is entirely void on this. It does not refute what I testified to because it cannot. Instead, it avoids the matter and, once again, Department counsel misrepresents.

42. The case record also holds uncontested proof that Oliver Patterson and Richard Geppert, FBI symbolled informants, did provide such surveillance information and Patterson's uncontested statement that the St. Louis FBI office paid him to go to Savannah for such surveillance and for his reporting on it to the Savannah office. (Some St. Louis records, along with all Geppert records, remain withheld.)

43. When I testified to the content and pertinence of the Savannah file, Department counsel declined to cross-examine me. Instead, he pulls this newest dirty trick and again misrepresents. Neither his unfactual misrepresentations nor the Phillips affidavit mention, leave alone refute, my cited testimony.

44. The need for these misrepresentations and for the continued withholdings is obvious to one knowing the facts: the FBI penetrated the defense of both James Earl Ray and his brother John Ray. Disclosing the withheld pertinent records will be embarrassing and will establish improprieties.

45. My prior affidavits, all entirely undisputed, provide considerable pertinent information, including but not limited to information from FBI records obtained by other means and from the FBI's informant Patterson.

46. I received only partial compliance with my request for the Patterson records, accompanied by a privacy waiver. I filed an appeal. It not only has not been acted upon - after more than two years it remains entirely ignored. The

plain and simple truth is that Patterson, who did report on the plans of the Ray defense, was a "Top Echelon" informant. Identifying him to the House assassinations committee (over his written objection) required the approval of the FBI's Top Echelon Informant Committee.

47. All Geppert records remain withheld, even after I provided prior Department counsel Betsy Ginsberg with a tape recording of his televised confession to having been an FBI informant. That Geppert was an FBI informant, of course, is public domain and defendant, defendant's counsel and the FBI all know it. This appeal also remains ignored.

48. Many other and entirely uncontested details of surveillance by the FBI and within these Items of my request are in the case record. They are steadfastly ignored by defendant, Department counsel and the appeals office to which I provided copies.

THE STIPULATION IS MISREPRESENTED
AND UNCONTESTEDLY WAS VIOLATED

49. The Memorandum also ignores my uncontested affidavits having to do with the Stipulation and defendant's deliberate violation and nullification of it. On page 2 the Memorandum states that I "must be aware that his (my) request nullifies a provision of the" Stipulation pertaining to "previously processed" records. I am aware of no such thing because it is not true. If Department counsel has no information other than was adduced in the depositions of Mr. Shea and his then assistant, Douglas Mitchell, Department counsel knows it is not true. The thrust of the testimony of both is that other than duplicates were withheld under the provision of the Stipulation that permitted the withholding of exact duplicates only and that the FBI unilaterally rewrote the Stipulation.

50. In one of his reports, which is in the case record and is incorporated in my affidavits, Mr. Shea states that if there is any such question it should be resolved in favor of disclosure, in my favor. My repeated requests remain ignored.

51. Moreover, it is uncontested that in the Kennedy case (C.A. 75-0322), where the same "previously processed" claim was made to withhold field office records, the FBI finally admitted, when forced to an accounting, that more than 3,000 pages claimed to have been previously processed in fact had not been. Allegedly they are not in FBIHQ files. In this instant cause it is claimed that many FBIHQ records are missing and cannot be located.

52. No check was made in this instant cause to determine whether or not

all records originating in the field offices and sent to FBIHQ do exist at FBIHQ and were provided. Many records reflect the retention of records in various divisions. At the time of the agreement which led to the checking of the Kennedy records and the providing of the identifications of the withheld records claimed to have been "previously processed" at FBIHQ, as well as the thousands of improperly withheld pages, it was my understanding that this defect in the King records also was to be remedied. I have had no written denial of this understanding and I have filed many - again ignored - appeals.

53. It was not until I obtained records of the New Orleans office, in response to my Privacy Act request of it, that I learned that FBIHQ had unilaterally rewritten the Stipulation and directed that only some of the pertinent records be included. After several years my affidavit, with the FBI's own records attached, remains entirely unchallenged.

54. The Stipulation was first violated in September 1977. I notified the FBI immediately, in writing. It has not made even pro forma denial. Instead, there is the repeated misleading and unfactual representations of counsel.

55. Department counsel now protests that complying would require "a new search of all field office records to compare them with what has been released." This is what the Stipulation required and was not done. Had the FBI complied with the Stipulation, this required comparison would have been made at the outset. There would be no such question today if my appeals and other communications had not been ignored. Without comparison of what was released with what the files hold, it is not possible to know what was "previously processed," and the FBI has never done this. Now its counsel bewails the need to do what the FBI bound itself to do and then did not do.

56. The representation of "a new search of all field office records" is misleading, not accidentally so. The field offices sent to Washington only some of their MURKIN records that had not been sent earlier. They made no search to comply with the Items of my requests and the Stipulation does not waive the Items of my request. The "new search" would be the first comparison between what was disclosed in FBIHQ records and field office files. It thus would not be "new."

57. The Stipulation is Exhibit A to the Second Phillips affidavit. It states that only after the FBI complies in full with all its provisions, "in

consideration of the foregoing commitment by the FBI and the Department, plaintiff will hold in abeyance filing of a motion to require a Vaughn v. Rosen showing with respect to the foregoing FBI files, including the headquarters files already processed, and further, that upon defendant's performance of these commitments by the specified dates, plaintiff will forego completely the filing of said motion." Its concluding words are that there is "the clear understanding of both parties that plaintiff has not waived his right to contest specific deletions after the passing of the dates."

58. If the Stipulation had been complied with, as it was not, all I agreed to forego is a Vaughn v. Rosen showing - nothing else.

59. I did contest withholdings and deletions, in writing. In violation of ~~the~~ the FBI's own understanding of the Stipulation, stated specifically in its own records now in the case record, that ~~it~~ the FBI was required to address my communications. To this day they remain ignored.

60. Department counsel has personal knowledge of the requirement that my communications be considered and responded to because the FBI's internal record referred to above, stating it was required to consider and respond to them, was used in the questioning of witnesses he represented at the depositions.

FILES OF THE ATTORNEY GENERAL
AND THE DEPUTY ATTORNEY GENERAL

61. The Memorandum states that Mr. Shea's affidavit of October 30, 1980, states that no pertinent records were found in the files of the Attorney General and his Deputy. The Shea affidavit does not describe what search was made or who made it. Mr. Shea does not claim to have made any search himself, or even that anyone on his staff made any search. The denial of the existence of any pertinent records, which is the thrust of the Shea affidavit, cannot be correct. Those files should hold, at the very least, copies of the many records sent to the Attorney General by the FBI and other components, like the Criminal and Civil Rights Divisions, some of which are in the case record.

62. Item 7 of my December 23, 1975, request is for copies of all communications with named persons. Item 8 seeks records pertaining to the guilty plea. That there are records relevant to each Item is public knowledge, was in the newspapers contemporaneously, and is included in the sworn testimony at the Ray evidentiary hearing of 1973.

63. Postponing until 1980 any search in response to a 1975 request, in itself dubious, is more questionable because of all the many allegations of full and complete compliance. Motions for Summary Judgment also were filed without any of these searches being made. That something may have happened to the Attorney General's and Deputy's files is indicated by the report to me of Mr. Shea's then assistant, Ms. Linda Robinson, who told me that these files could not be found. Now, four years later, the files allegedly are found, allegedly are barren, and the secondhand attestation does not even state who made the search or when it was made.

64. On October 30 Mr. Shea attested that his office had finally begun to process Attorney General and Deputy Attorney General records I requested in 1977. Two requests were filed, based on experience in this litigation, to broaden the earlier requests. It required only three years and the pressure of this litigation to get a response, that "My office is currently processing" records that were located. In the ensuing two and a half months, they have not been provided.

65. "The great majority of the deletions," the Memorandum states at page 3, are under claim to (7)(C) and (D). Of these it states that "Legal support for those deletions can be found in defendant's April 25, 1980, memorandum." That is the same Memorandum disputed so vigorously in my May 14, 1980, affidavit, which has not been refuted or disputed. Whether or not that Memorandum provides an uncontested justification for the uses made of those exemptions, in this instant cause the defendant offered the expert testimony of Mr. Shea, who is defendant's chief FOIA appeals officer. On cross-examination Mr. Shea testified that these claims were made excessively and the records should be reprocessed. The case record, my appeals and the consultancy report also reflect the FBI's claim to these exemptions to withhold the public domain. My representations are not disputed.

66. These exemptions also are the ones most commonly claimed in the FBI's disclosure of Kennedy assassination records. The records provided in this instant cause were processed by "Operation Onslaught" agents. Their work, as the Court stated, is inferior to the standards followed in subsequent processing. The Kennedy records were processed after the end of "Onslaught." However, pertaining to the FBI's uses of (7)(C) and (D) in these historically important, political

cases, the Associate Attorney General, John Shenefield, wrote my counsel on December 16, 1980, that "these exemptions were used to deny access to significant quantities of substantive information." Contrary to the representations of the Memorandum, the uses of these exemptions, whether or not "a question of law," in this case are vigorously disputed, including by the defendant's own expert witness, and my refutation of defendant's earlier portion of this Memorandum is undisputed. (The Shenefield letter is Exhibit 2.)

CLASSIFICATION - THE SECOND AFFIDAVIT
OF SPECIAL AGENT DONALD R. MACDONALD

67. Macdonald provides a lengthy, convoluted, almost entirely irrelevant and a clearly boiler-plated affidavit of 12 pages to justify something he does not state until the end, the (b)(1) claim made for Documents 30A, 34A and 39A. It is the sole justification for (b)(1) claims.

68. Instead of addressing what he represents to be the case with regard to these three records, Macdonald has a long boiler-plated song and dance that almost entirely has no relationship to these records. He adds three pages to this form affidavit, beginning each one with a document number. With regard to his affidavit and Document 30A, he claims no more than that he explains the anticipated hazard pertaining to 30A in his Paragraph (IV)(B). With regard to 34A, the same thing is true and the only specific citation to the preceding pages of his affidavit is to Paragraph (IV)(E).

69. With regard to Document 39A, the only specific citation in his affidavit is to Paragraph (IV)(B).

70. Of all his many paragraphs Macdonald refers to only two parts of Paragraph (IV). This paragraph, however, has four different lettered parts in addition to these two. Thus, clearly, they and all the other pages and paragraphs serve no purpose and are but an attempt to intimidate and to make what is conclusory and vague and almost entirely irrelevant appear to be of significance.

71. Where Macdonald's affidavit deals with generalities as with Paragraph (IV)(B) and foreign government information, he does not at any point allege that what he states pertains to the one record for which he made a claim under this paragraph. Instead, he catalogues conjectured horrors for over two full pages without at any point tying any of these imaginary catastrophes to the

document in question. He conjectures one of the disasters will be the cessation of cooperation from what he refers to as "the intelligence services of foreign countries," but in this case he really means the police agencies. He does not at any point claim that any of the withheld information has not been made public or that the foreign agencies did not agree to its being made public. In fact, the FBI itself has disclosed to me information it obtained from not fewer than five such foreign police agencies, plus several Italian intelligence agencies. In addition to that, the evidence collected during the investigation was intended for use in the Ray trial that was expected. So there is just no basis for assuming that any of the withheld information in fact is not publicly available.

72. When it comes to a danger from providing "evidence of the existence" of "friendly foreign intelligence and security services" cooperation, there is no basis for presuming that it is not well known. There is no danger from making known the fact of the cooperation because everybody knows that all these agencies cooperate.

73. With regard to these two records, one is supposed to believe that in this same paragraph (on page 7) there is danger to cooperation from foreign agencies and that, in addition, there would be "careful analysis of this information by hostile intelligence services." The nature of the information provided in the Ray investigation does not possibly fit this description.

74. Because most of the affidavit itself is entirely irrelevant and is intended only to intimidate, to illustrate the ridiculousness of Macdonald's allegations, I limit myself to Paragraph (IV)(E) which he cites for Document 34A. He says that its disclosure could:

> (1) Lead to foreign diplomatic, economic, or military retaliation against the United States;
> (2) Identify the target, scope and time frame of intelligence gathering activities of the United States in or about a foreign country, resulting in the curtailment or cessation of these activities;
> (3) Enable hostile entities to assess United States intelligence gathering activities in or about a foreign country and devise counter-measures against these activities;
> (4) Compromise cooperative foreign sources, jeopardize their safety and curtail the flow of information from these sources; and
> (5) Endanger citizens of the United States who might be residing or traveling in the foreign country involved,
> resulting in at least identifiable damage to the national security.

There just is no possibility of any one of these disasters coming to pass in this case.

75. Also bearing on the boilerplate character of Macdonald's affidavit is Paragraph (V)(A) (pages 11-12). He concludes this section by saying, "I have endeavored to maximize the release of information, while at the same time minimize the potential for damage to the national security through disclosure of information." He does not at any point say what he disclosed. He does not claim to have disclosed anything where he describes the three records or at any other point in the affidavit.

76. However, with regard to Documents 34A and 39A, the FBI now discloses some information that it had withheld in this case. Examination of it reveals the fact that there was never any basis for ever withholding it in the past and at least some of it was under appeal that was never acted on. There is, however, proof that there was improper withholding. What the Macdonald affidavit proves is that two out of every three classified records have improper withholdings in them, that in two out of three cases national security claim is made when it is inappropriate. (Document 34A is Exhibit 1.)

77. Macdonald does not say he reviewed all the withheld classified records and from his affidavit one is not given any reason to believe that he did review them all. The only thing that can be inferred is that he reviewed three records only. However, I did appeal all classification withholdings and asked for a classification review. I do not recall ever having a response. (On page 2 all he says is "Prior to the preparation of this affidavit, I personally reviewed FBI files pertinent to plaintiff's FOIA request." He does not say what files and he does not say all files.)

78. Macdonald refers to classification as of September 11, 1980. These records were withheld in 1976 and 1977.

79. With regard to Document 34A, Macdonald also claims "identifiable damage" to the national security "as explained in paragraphs (IV)(C) and (D)." (See also below.) Examining them shows they consist of another catalogue of conjectured horrors. He at no point shows how any one of these things could apply to the few passages removed from that one record, a 1976 record pertaining to surveillance on Dr. King a decade earlier.

80. This document is not a foreign intelligence document. It is a domestic intelligence document.

81. In short, the Macdonald affidavit is vague, conclusory, does not

identify what he really is talking about in any meaningful way, is intended to intimidate rather than to inform the Court.

82. The Memorandum alleges (page 3) that "A. The FBI Correctly Applied FOIA Exemption 1 to the Sample Documents." Examination of the Macdonald affidavit, however, makes it clear that Exemption 1 was not correctly applied. Orwell could not improve upon Department and FBI practice.

83. Examination of the underlying documents reflects the fact that, of the three samples of claims to (b)(1), it is admitted that at the time of withholding Exemption 1 was not correctly applied. In one case the record bore no classification at all. In another case, Document 34A, there were two withholdings. Neither was ever justified. With improper claim to exemption in two out of three samples, if this percentage is applied to all the records in question, this sampling actually establishes that in hundreds if not thousands of pages improper claim to (b)(1) was made.

84. Careful examination of the Memorandum and the Macdonald affidavit also discloses that, in an effort to justify improper withholding, false representation is again made by Department counsel.

85. It is alleged (under Argument, page 4) that after two prior classification reviews what was withheld in Document 34A was found still to be properly withheld. Then there was a third classification review, required by the present matter and the possibility of in camera inspection. Allegedly "as a result of events since 1977," three additional paragraphs are disclosed, according to Department counsel.

86. Department counsel does not identify or specify what events. Instead, he cites the second Macdonald affidavit (pages 3-4). Macdonald, however, does not refer to or even mention any "events since 1977." It turns out that this is language of the Executive Order, which requires declassification under certain circumstances. The one last cited is "a declassification event."

87. The reason neither Department counsel nor Macdonald cites or in any way identifies such "event" is because there was none. The allegation of the Memorandum is a complete fabrication. But if there had been any such event in 1977, there is no explanation of withholding until the end of 1980, when the case was in court and when I had filed all those - ignored - appeals.

88. What is now disclosed in Document 34A, after persistent "national security" claim, is the paragraph under "Synopsis" on page 1 and the second and third paragraphs on page 3. (Exhibit 1) There is nothing in these paragraphs that is disclosed as the result of any event. There is nothing in them that was properly subject to (b)(1) classification in 1977. In fact, there is nothing in them that is not public domain. In this instant cause the information was disclosed in 1977 as it also was in the Lesar case.

89. What was withheld is what could be embarrassing to the Department and the FBI, the Department's agreement to submit to the FBI, in advance, its Office of Professional Responsibility (OPR) report on its alleged investigation of the FBI's performance in the King assassination investigation and its campaign to ruin Dr. King.

90. Examination of the Macdonald sample shows that in 1977 the record was upgraded from confidential to secret. This is the very opposite of a "declassification event."

91. Department counsel argues that the Court must accord "substantial weight" to the Macdonald affidavit because judges "lack the expertise to second guess" withholdings attributed to "national security" requirements (pages 4-5).

92. This is to say that the Department claims it is 1) entitled to fabricate a "national security" claim to withhold and 2) that if a court questions this claim, the court is "second guessing" when the "national security" is involved. No disclosure act can survive this interpretation or such practices.

93. These are, however, the Department's and the FBI's norm in my cases, which are political cases and involve embarrassing information. There is tacit acknowledgment of this in Associate Attorney General John Shenefield's December 16, 1980, letter to my counsel (attached as Exhibit 2). In the third paragraph of the first page it is stated that in those JFK assassination records, administrative review "of the 113 pages and 142 individual paragraphs" resulted "in the declassification of 29 entire pages and 36 additional paragraphs." The remaining classified information is to be reviewed and more may be disclosed.

94. This is an appreciable percentage of the classified records in that case and the percentage, applied in this instant cause, entails a considerable volume of withheld records.

95. My ignored appeal for declassification review under E.O. 12065 was not filed in 1980. It was filed several years earlier, at the time that E.O. was promulgated.

CLAIMS TO EXEMPTION 2

96. The Memorandum cites the Phillips affidavit to justify the claim to exemption 2. In this instant cause the Department presented Mr. Shea as its expert witness. He then testified that the claim to (b)(2) in this matter is not justified.

STATEMENT OF MATERIAL FACTS AS TO WHICH DEFENDANT CONTENDS THERE IS NO MATERIAL ISSUE

97. The Department is not capable of citing the case record accurately and here cites it inaccurately. For example, "1. Plaintiff's information requests in this case are contained in letters dated April 15, 1975, and December 23, 1975." In fact, there were earlier requests, ordered on highest authority to be ignored. The question came up in court and the Court held that my 1969 requests also are pertinent.

98. The purpose of the Stipulation is given as "2. ... set up a procedure to expedite the processing of information requested ..." The actual and stated purpose of the Stipulation was to attempt to avoid the need for a Vaughn v. Rosen showing, in return for which the FBI made promises it did not keep. To obtain agreement to the Stipulation, the FBI made misrepresentations, based on which I agreed to the Stipulation. Not until I obtained internal FBI records several years later did I learn that the processing of the field office records provided under the Stipulation and required by the requests was largely completed at the time the FBI misrepresented this to obtain agreement to the Stipulation. We were led to believe that after agreement to the Stipulation these records would be provided. The FBI was insisting that it was not required to search field office files but, knowing better, it had been processing them. My affidavit attesting to this and providing the proofs remains unrefuted - ignored.

99. In the eighth listed material fact as to which it is contended there is no genuine issue, it is pretended that there is no contradiction of the filings of April 25, 1980, "which are hereby incorporated by reference." This is not true. I filed a lengthy, detailed and documented affidavit in refutation. My affidavit remains uncontested and there thus is a perpetuated dispute about material facts.

100. The ninth claim is that there is no dispute that the names of "FBI employees through Section 86 of the FBIHQ MURKIN file" were withheld "to protect from unwarranted invasion of privacy." This is false, it is crass contempt of the Court and it is deliberate and continuing disregard of the Court's June 10, 1976, Order in which the Court held that the claim could not be made to withhold those names. I emphasize that the uncontested Order preceded the processing of the first MURKIN record by several months. The other allegations pertaining to the alleged protection of "individuals who were investigated" and "third parties, not investigated" and of other "third parties and confidential sources" are all disputed, were in dispute when this statement was drafted and remain in dispute with the present filings.

101. The eleventh pretended nondispute pertains to the affidavits of four named Department employees, but those affidavits are all rebutted by mine, mine remains uncontested and the Court stated bluntly at the August 15, 1980, calendar call that those affidavits are worthless.

AFFIDAVIT OF ROBERT L. PRITCHETT,
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

102. This affidavit is so vague and conclusory it does not even provide any identification of the one ATF record involved in this sampling. (It is Document 78A.)

103. A careful reading of the Pritchett affidavit discloses the indirect admission of excessive claim to exemption. As originally disclosed, exemption 7(A) was claimed. That claim is abandoned in this affidavit, which limits the claims to (7)(C) and (7)(D).

104. Pritchett does not state that a balancing test was made. He does not state that none of the withheld information is not already public.

AFFIDAVIT OF JANET L. BLIZARD,
CIVIL RIGHTS DIVISION

105. Ms. Blizard's affidavit has as an exhibit one Civil Rights Division (CRD) record. However, she does not attach the CRD copy and there is no Department identification of any kind on her exhibit. What she attaches as her exhibit is an FBIHQ MURKIN record, 44-38861-5904. Ms. Blizard's explanation does not include informing the Court that she does not attach a Department or CRD record. Instead, she attaches what is not pertinent, an FBI document. She says only, "The Civil

Rights Division's file does not contain a copy of the document as released, to the plaintiff ..." (page 2) It should and she does not account for its absence.

106. Without consulting the record as released to me, Ms. Blizard states that there are two excisions, one on page 11, the other on page 14, both allegedly to prevent "an unwarranted invasion of personal privacy of the named individual." While there is no way of knowing what Ms. Blizard's files hold, there is a way of knowing whether or not the excisions are justified. They are not. This withheld information was disclosed by the Department and by the FBI and, contrary to the original pretenses of the CRD, by Byron Watson and his mother. The CRD has never responded to my appeal from the withholding of this information, which was public domain, first placed there by the Watsons, then by the FBI.

107. Comparing Ms. Blizard's exhibit with the version disclosed by the CRD when it was an FBI referral reveals what is not in accord with Ms. Blizard's affidavit. Under date of June 8, 1978, the FBI forwarded to me this and a number of other records which had been referred to the CRD. There are withholdings on pages 4, 5 and 14 that are not accounted for in Ms. Blizard's affidavit.

108. My present medical and physical limitations preclude my retrieving the records as provided to me by the CRD. However, it is my recollection that I was provided with a copy of this memorandum in holographic form, that there were extensive withholdings, that the withholdings included (b)(5) in the claims to exemption, that I appealed and that, after all these years, my appeal remains ignored.

AFFIDAVIT OF SA JOHN N. PHILLIPS

109. Phillips identifies himself as a special agent in a supervisory capacity in the FOIPA branch of the FBI. He states that he is "familiar with all aspects" of my request "as it relates to the FBI." He also says he is "familiar with the various exemptions allowed" under FOIA.

110. If Phillips is familiar with "all aspects," then he certainly is familiar with two that seem to be pertinent. One is the requests themselves. He does not attest that the FBI has searched all Items in compliance with my request and, in fact, it has not. Two, there is the question of the appeals. If he is familiar with "all aspects," as related to the FBI, then he certainly knows of a full file drawer of documented appeals which include some of the things he goes

into in his affidavit in subsequent paragraphs.

111. He concludes his paragraph (1) with a typical FBI boilerplate in which he says that "all information contained herein is based upon my personal review of the documents at issue in this lawsuit, as well as information furnished to me in my official capacity." What this means is that he may have no personal knowledge at all. If there are those around who can provide him with information, they also can provide first-person affidavits.

112. In his paragraph (3) he identifies Exhibit A as "an itemization of each of the 95 replacement documents" replacing those from the original sampling where there were no withholdings in the original samplings.

113. In paragraph (4) (page 3) he identifies a "tickler" as "a carbon copy." They are not actually carbon copies in all cases. He also says of them that they "are generally destroyed after a brief period of time." Within my experience, they have not been destroyed after a decade. He does not state that they have been destroyed in this particular case. In fact, all have not been.

114. In his description of an abstract (page 3), he contradicts the sworn statements of Special Agent Martin Wood earlier in this case. If his description is correct, Wood's is not. If Wood's is correct, his is not.

115. In his paragraph (5) he describes what the FBI processed and retrieved. He states, "In response to plaintiff's FOIA requests for material on the assassination of Dr. King" (here he uses the plural), the FBI limited itself entirely to "non-exempt portions of MURKIN and related files."

116. This clearly states that the FBI did not at any time conduct any search pursuant to my requests. Instead, it provided some MURKIN records only.

117. He does not refer to my appeals, to any responses to my appeals or nonresponses, and where he refers to ticklers in the plural, in fact, I received only parts of two, what was not destroyed of the Long tickler and a few pages of a Lab tickler, both previously claimed not to exist. My appeals do include the identification of other ticklers. We learned of a Lawn tickler on deposition, we requested it and it remains withheld.

118. He represents the total amount of information released to me as of 53,000 pages.

119. In his explanation of withholding of classified information

(paragraph 11, page 6), he depends on the affidavit of SA Donald R. Macdonald which is limited to Documents 30A, 34A and 39A. About these Phillips alleges Macdonald provides "a detailed justification for information withheld which is properly classified." As stated above, this is not so.

120. Macdonald's affidavit does not meet the standards as I understand them set forth in recent appeals court decisions.

121. In his Paragraph (12) he seeks to jusitfy the claim to (b)(2). Quinlan Shea testified that the FBI should not have used (b)(2) in this case. Instead of abandoning them, and contrary to the defendant's expert witness testimony, the FBI still attempts to justify their inappropriate use of (b)(2).

122. In order to make it appear necessary that (b)(2) be used, Phillips says what is not true, that the arbitrary symbols used in FBI records instead of the names of informants are "of a code of letters and numbers." They are not in any sense a code.

123. It is Phillips' claim that the disclosure of the symbol numbers permits the identification of the informant. This is not true. The FBI has disclosed these symbol numbers. It discloses another arbitrary representation, the file number, which is just as unique, and in no case has it ever alleged this led to the identification of an informer. However, as the case record reflects without contradiction, the FBI disclosed the actual identification of several informants for its own ulterior purposes, one over his written objections.

124. Even if the claim were true, it does not require the use of exemption (b)(2). (7)(D) is designed for this purpose.

125. However, the FBI has a problem in using (7)(D) because it has extended the Act with regard to (7)(D) to include anybody who ever gives any information to the FBI under any circumstances, whether or not a confidential informer, whether or not a unique source, and regardless of the fact that what it withholds is public knowledge - even disclosed by the FBI itself.

126. In Paragraph (13), titled "Unwarranted Invasion of Personal Privacy," Phillips seeks to justify the FBI's claims to exemption (b)(7)(C).

127. He claims there was a balancing test (pages 7-8) which no doubt explains the FBI's continuing to withhold what is in the public domain, even after my appeals included copies of the public domain. Despite this, he alleges what is

not true, "where it was apparent in the file itself that the information was publicly known, it was released." There is a large number of appeals I have filed where the FBI had released the information it then withheld. Not one of these appeals has been acted on. Two that the Court may recall have to do with Marjorie Fetters and Morris Davis. The FBI itself disclosed that they were informers.

128. Phillips then alleges what also is not true, that "Only where it was felt that the disclosure of this information would announce to the world facts or allegations from which derogatory inferences might be drawn was the information deleted. There are hundreds of instances in which derogatory information was not withheld. I have filed several uncontested and documented affidavits showing that the FBI's practice is arbitrary and inconsistent. Where there are people the FBI did not like, and this includes blacks and women, there was little privacy to protect. As of today, the FBI still withholds improperly records pertaining to Raul Esquivel, the Powell brothers in Atlanta and El Paso (and these are included in Phillips' sampling) and many others that I have appealed.

129. Rather than correcting the records to make them consistent with the prior Wood affidavit or to bring them in accord with the June 1976 Order of the Court, Phillips attempts to justify the withholding of "c. Names of FBI Employees" (pages 9-10). He states these were the names of field agents only but that is not correct. He states, "This was done to protect them from possible harassment and to prevent public exposure which would affect their ability to perform their responsibilities," which also is not correct. Moreover, in every case this was done after this Court's Order prohibiting it. He also states what is not true, that beginning after the processing of Section 86 of the FBIHQ MURKIN file and continuing thereafter, "upon a reconsideration of the historical nature of this material, the names of FBI employees were left in the text of the documents." As recently as the Wood affidavit attached to the first part of this Motion and in the inventory of political records on Dr. King, the FBI did not follow this practice and it did withhold FBI names. It did other than Phillips attests in other of my cases, particularly C.A. 78=0322, pertaining to which more appears below.

130. Under "(14) Confidential Source Material" Phillips extends the language of the Act to have it include anyone who ever provides any information. He falsely represents that public cooperation "is dependent upon the confidential

relationship" which ensues. The FBI regularly asserts this claim for the public domain - even for what it and the Department have placed in the public domain.

131. Where there is an explicit request for or promise of confidentiality, the records reflect it. I have not made an issue of this in this litigation. Because there is this "expressed confidentiality," he has a separate paragraph on this on page 13.

132. His affidavit consists of general statements of claims to exemption rather than specific claims related to specific withholdings and in his Exhibit A attachment Phillips merely cites these generalized claims of his affidavit.

Phillips' Exhibit A - The Samples

133. Document 23A withholdings the name of a postal inspector on the ground that "release of this material would reveal his cooperation with the FBI, and would consequently be an unwarranted invasion of his privacy." The cooperation of postal inspectors with the FBI is a matter of public record and public knowledge. I believe the withheld name is disclosed in other records. The withholding of this name violates the Court's Order of June 10, 1976, issued prior to the processing of any MURKIN records.

134. Document 25A alleges deletions were made "pursuant to exemption (b)(7)(C) to protect the identity and personal identifiers of an individual in whom the FBI had an investigative interest. Release of this information would constitute an unwarranted invasion of his privacy." The content of this document is disclosed in other records. As I recall it, the name of the person is Schwartz and he is a lawyer.

135. Document 27A, as is true of most of the samples, is processed to make it consistent with the form in which it was originally disclosed, not to have it processed properly. In this case what is claimed must be withheld is also disclosed. The justification is that a source inside the Klan is withheld under (7)(D) and "(b)(7)(C) was asserted to protect the name and address of an individual who was contacted by the FBI for an interview with negative results." The name of this individual is provided at two different places on the document itself, together with the fact that the FBI has two different files on her, a matter that, in connection with other withholdings, the FBI says it must always withhold in order to protect privacy. The name is Mrs. Eloise Witte. The Headquarters file number

is 157-3302, Cincinnati file number 157-341.

136. In connection with the claim made to withhold the symbol for the Klan informant, the justification is "to protect the symbol number of an established FBI informant who furnished information on a continuing basis. Release of this information could compromise his identity and reveal his cooperation with the FBI." Despite this, on this particular record the informant file number is disclosed. It is a Cincinnati informant and his file number is 170-15. "170" symbolizes "extremist informants."

137. Document 30A is withheld in its entirety as a "report from a foreign government police agency" claimed to be necessary under (b)(1) "to protect information which is currently and properly classified." In this instant cause the FBI has disclosed such information from Mexican, Canadian, British, Italian and Portuguese police agencies. The withholding in the entirety is not necessary if the need to withhold is legitimate. There is no reason to believe that the need to withhold is legitimate because the work of these police agencies was for use in court and was given to the prosecution. (See also under Macdonald affidavit re Documents 30A, 34A and 39A.)

138. In Document 34A, (b)(1) only is claimed. On the first page what is withheld elsewhere both as (b)(1) and (b)(7)(C) is disclosed. It is the name of the late Stanley David Levison. He was an associate of Dr. King's and one of Dr. King's lawyers.

139. The claim is that the information withheld is currently and properly classified. This seems improbable in light of the work of the Church committee and what has since become public knowledge about the FBI's vast campaign against Dr. King and its spying on him and his associates.

140. There is no claim of need to protect the identification of an informer.

141. It is now admitted that there was improper withholding in the document as originally provided, in the second paragraph on page 1 and the second and third paragraphs on page 3. What is now disclosed reveals that there was never any basis for those (b)(1) claims.

142. In Document 35A what is withheld in other records is disclosed, the names of people who voluntarily cooperated with the FBI and the names of people in

whom the FBI had an investigative interest.

143. In Document 36A there is a withholding from a note added to a wire service news account. The news account reports the arrest in Mexico of an American hitchhiker as a suspect in the King assassination investigation. (Previously withheld FBI names are restored in this copy.)

144. The withheld name of the man arrested was widely published. It happens not to have been included in this one-sentence wire-service summary. As I recall it, the man was from Baltimore or the Baltimore area. He was arrested in Mexico. Obviously, this kind of information is public and Phillips is stone-walling in an effort to justify the improper withholding.

145. In Document 39A the FBI restores the withheld name of the Reverend James Groppi.

146. I appealed the withholding on the ground that he was a public figure, this his name was public and that the withholding was improper and unnecessary. My appeal was never acted on. Because of the accident of the record having to be produced to the Court, there was no choice but to restore the name.

147. Document 40A also is the subject of one of my ignored appeals. The FBI here provides only the cover page of a report, which is 72=1840-92, plus a page from a transcript of a phone tap, from New Orleans file 72-111, identified as "Tape H E 605 HQ page 25." This record pertains to Jim Garrison and both the JFK and King assassinations investigations. It was not provided to me from the New Orleans records in that litigation in the JFK case. The FBI's justification for providing only two pages is that this is the only part containing pertinent information.

148. The exemption claimed for what is withheld on the single page is (b)(7)(C), "to protect the p;rivacy of other individuals." The allegation is that this would "constitute an unwarranted invasion of their personal privacy."

149. Elsewhere the FBI disclosed their names. One is Jim Garrison, the other is "Jack Martin," whose right name is Suggs. The protection is of the FBI, not them.

150. This report is a Hoffa case report. There were allegations that an effort was made to influence the testimony of Edward Grady (Whitey) Partin, who had become an FBI and Department of Justice adjunct and went around wired for sound

to "get" Hoffa. In return for this, Partin was excused for some 26 crimes, at least two of which were capital offenses.

151. The FBI makes an entirely unjustified assumption in assuming that there is no Partin interest in a King assassination investigation. The contrary is true. One of the withholdings from the Washington Field Office records, in violation of the Stipulation, pertains to a report that Partin was responsible for the assassination. (This is the Gaines matter, detailed in an earlier affidavit.)

152. In Document 42A, under claim of need to protect his privacy, the FBI withholds some information about Jimmie Delton Garner. By any standard, Garner is what Mr. Shea calls a "player" in the investigation, a significant person. Garner ran the flophouse in which Ray stayed in Atlanta. The need to protect Garner's privacy did not extend to the FBI's not disclosing that he was discharged as a second lieutenant "under conditions other than honorable."

153. Garner was well-known as a drunk. The FBI took advantage of this to pull a black bag job about which the special agent in charge was ordered to and did file a false affidavit denying it once word got out. My previous and undisputed affidavits provide details.

154. In Document 44A (b)(2) and (b)(7)(D) claims are made "to protect the informant symbol number of an established FBI Informant." However, the FBI again discloses the file number (170-194), which is as much of an identifier as the symbol number.

155. Document 45A is one of a series in which the FBI makes a (b)(7)(C) claim "to insure at least minimal privacy of an individual whose identity was released." It further is claimed that release of what is withheld would constitute an "unwarranted invasion of personal privacy."

156. What is not withheld is defamatory and personal. What is withheld is merely an Army serial number. Although it is withheld in other cases, here the place of employment and even the workshift is disclosed. The identification of the man's family, including that a son is in a reform school as a result of a burglary, is disclosed. That another man who has no connection with the investigation or the crime is a drunk also is disclosed. The FBI's pretended concern for "minimal" privacy did not prompt it to withhold the unsupported and obviously untruthful

allegation against an innocent clergyman: "... suspected Rev. SMITH of operating a conspiracy or syndicate type organization and would hide out anybody who came to the home who was being sought by the law."

157. Document 52A (Chicago 44-1114-Sub D 21) is identified as an exhibit envelope said to have been released with no deletions. It held photographs that were "withheld pursuant to exemption (b)(7)(C)" to avoid what "would result in an unwarranted invasion of" Jerry Ray's privacy.

158. Clearly, Jerry Ray is a public figure in this case. He and the FBI both saw to that. Moreover, the pictures are disclosed by the FBI, to me and in this case. This is simply another instance of the FBI blindly insisting that the original processing was correct, without regard to whether or not it was.

159. Document 53A (CG44-1114-Sub D-52) is an exhibit envelope containing two photographs, apparently the same two photographs as in Document 52A. "A deletion was made on the exhibit envelope pursuant to exemption (b)(7)(D) to protect the source who provided the photographs to the FBI." Here again the FBI blindly reaches for a convenient lie to deceive and mislead the Court, to try to justify an improper withholding. It disclosed the source in this case. She is Marjorie Fetters. This also is the subject of one of the countless ignored appeals. Marjorie Fetters is the woman to whom Jerry Ray sent these two pictures. With regard to Document 53A, the claim does not extend to the withholding of the pictures, only to the withholding of the name of the person who provided them. (This and the other field office records in the sampling are Stipulation records. The FBI was to respond to these appeals under the Stipulation but it has not. This is one of its persisting violations of the Stipulation.)

160. Document 60A is an exhibit envelope "which contains one photograph of James Owens." The FBI says the envelope was released but "the photograph was withheld ... to protect against an unwarranted invasion of the privacy of" Owens. In this particular version the photograph was withheld. However, the FBI did disclose Owens' photograph. Here again Phillips blindly asserts a claim, without regard for truth, rather than admit and correct error.

161. Document 63A is withheld in its entirety under (b)(7)(C) and (D) "to protect the identity and personal information regarding an individual who was able to furnish the FBI information regarding James Earl Ray inasmuch as he had

been incarcerated with Ray at Leavenworth Penitentiary. Release of this document would not only constitute an unwarranted invasion of his privacy, but would also make public material that could be traced to this source." The record is a six-page FD 302. Certainly, even if all of these representations are true, which they are not, some of six pages is reasonably segregable. However, if one compares this with Document 75A, one finds the FBI is quite inconsistent. Deletions were made in Document 75A under (b)(7)(C) and (D), but in it the source of the information is included in Phillips' explanation, "an individual who had been incarcerated with James Earl Ray at Missouri State Penitentiary and furnished information regarding Mr. Ray." Here the only thing that is withheld is the name.

162. Document 74A is another case of the FBI disclosing names and other personal information about people and now claiming, to justify the withholding, that it is in order to afford "minimal privacy." It here withholds the number of a Memphis policeman, an FBI number and an Air Force number. These are the kinds of information that even within this sampling the FBI does disclose.

163. Document 76A is similar in that each of the men who is identified by name is identified as having a criminal record. What is withheld in each case is the number. The third one on this list, Thomas Albert Tarrants, III, has his FBI number withheld although the FBI itself published it when he was wanted. (Tarrants also is the subject of an appeal that has not been acted on.)

164. Document 78A is the ATF record that is the subject of the Pritchett affidavit (see under Pritchett affidavit). In the FBI part of this record what the FBI withholds elsewhere is not withheld. This includes identification and the names of the persons who provided the FBI with information. The information pertains to a paramilitary extremist group, the Minutemen. The Minutemen are capable of retaliating.

165. Document 87A has a boilerplate claim made to justify the withholding of numbers: "to withhold personal identifying numbers of individuals whose names were released as being members of the Invaders organization. This was done to protect against an unwarranted invasion of their privacy."

166. If there is anything examination of the disclosed Invaders records leaves without doubt, it is that the FBI could not have cared less about the rights to privacy of "members" of the Invaders, especially women who were not members.

(According to the disclosed FBI records, there were no memberships. The Invaders were a loose group without any formal structure.) Where the FBI could associate women with the Invaders, whether the women were white or black, the FBI defamed them. This is particularly true with regard to details of their personal lives. This is set forth, with copies of the defamatory records, in a number of my affidavits that remain undisputed.

167. Once again the FBI, rather than cleaning up improper processing of the past, seeks to bulldoze by making up what is not true to justify what it has done. Here it claims need to withhold numbers to give some privacy to people, even though with regard to each of these people the FBI alleges he or she is a criminal. Documents 79A and 80A disclose the kind of information that the FBI here claims it may not disclose in the interest of privacy. These other records include local police numbers and FBI numbers. The FBI did disclose them in spite of what Phillips here claims.

168. The actuality is that the FBI was engaged in an enormous domestic intelligence operation. It sought, without basis but in pursuit of political preconceptions coming from headquarters, to create the fiction of an enormous network of what it called black militant hate groups, all with the same allegedly violent objectives. In the case of Memphis and the Invaders, it sought primarily to connect them with the SNCC, Black Panthers and other such black groups. For example, in Document 90A, the opening paragraph refers to two Invaders as "being black power leaders of a SNCC-oriented group." This means nothing except that the FBI wants to connect the Invaders with the SNCC.

169. Document 90A pertains to the Memphis Sanitation Workers Strike. The FBI claims that it used (7)(C) and (D) to protect the source and separately (7)(C) "to withhold the names of individuals listed in the copy count at the bottom of the first page on whom the FBI had instituted an investigation and subsequently opened a file. Release of this information would result in an unwarranted invasion of personal privacy."

170. At the bottom of the first page three names after three numbers are obliterated. Two of the numbers do not symbolize what the FBI in its justification represents they symbolize. These are 170-114 and 170-1024. "170" means "extremist informants." (The third is 157-957, "157" meaning both extremist matters and civil unrest.)

171. In Invaders and Sanitation Workers (also Stipulation) records the FBI has disclosed more than a hundred names of persons included in what Phillips calls its "copy count." Some records required a second page for listing them all. It is more than a copy count. It indicates where duplicate filings are to be made.

172. Document 99A consists of cards from the so-called prosecutorial index. The FBI withholds what it regularly disclosed, "information regarding two of James Earl Ray's fellow inmates, the release of which would constitute an unwarranted invasion of privacy." In fact, elsewhere on this same card the names of two other associates of Ray in the prison are disclosed, as they also are on the next card.

173. The card itself is in the name of Julius Mausica Black. He is described as an inmate of the Missouri pen and "worker in bakery while Ray was bakery worker." The identical information is disclosed about Black that the FBI withholds about the two others and also withholds in illustrations cited above.

174. There are several items pertaining to Sue Harris (Flikeid) in these index cards. The FBI withholds allegedly to protect her privacy and, as it sometimes claims, to withhold information that could be embarrassing to her. It is difficult, if not impossible, for the FBI to disclose more than it has that could be embarrassing to Susan Harris. The first of these cards discloses the fact that she was living with a man who was not her husband and where they were living. Throughout a long series of disclosed records, she is included in those relating to the investigation of two women whose names appeared on a scrap of a Kleenex box that was found in James Earl Ray's car.

175. Document 111A is described as "(CIVIL RIGHTS UNIT TICKLERS)." Actually, only part of one CRU tickler was disclosed. To make it appear otherwise, the FBI pretends that each separate file folder is a separate tickler, which is not true. Here there are withholdings "pursuant to (b)(7)(C) and (b)(7)(D) used in conjunction with each other to protect the identities of two individuals who furnished information to the FBI regarding a possible conspiracy to kill Dr. King. So that as much information as possible could be released regarding the alleged conspiracy, the informant's name and personal identifiers, along with material which would allow this information to be traced back to him was deleted." This is worse than utter nonsense. It is sworn-to untruthfulness, deliberate misrepre-

sentation and a deliberate effort to mislead the Court. This clearly refers to the Powell brothers. The whole thing is public. The FBI disclosed their names to me. It also turned the records over to the House assassins committee, which went ape and had one of the Powells indicted because he was afraid. In fact, the committee went so public with this information that when it released sketches one of the alleged co-conspirator, "Ralph," was included among them. If only from me the FBI should have been aware because this is the subject of another of my ignored appeals. If the FBI were proceeding in good faith, it would reprocess these kinds of improper withholdings, disclosing what does not have to be withheld and cannot properly be withheld. Instead, it fights tooth and nail to impede and stonewall as much as possible - to withhold what it made public domain.

176. Document 112A is described as Civil Rights Unit Ticklers and is part of the same series of records relating to the Powells. Here the FBI claims "Deletions were made in this document pursuant to exemption (b)(7)(C) to protect the name and personal identifiers of an individual who was allegedly involved in a conspiracy to murder Dr. King." In this case the record, which, in this version, has no FBI file number, identifies the subjects as two brothers and also identifies the other suspect as "Ralph."

177. Document 129A is an abstract in which the street address is withheld but the name of the person is not. The explanation is that the (b)(7)(C) withholding was "to extend at least minimal privacy protection, inasmuch as his name was released." With the name released, there is no privacy protection in withholding the address because it appears in such other standard sources as telephone books and city directories. However, the FBI has disclosed street addresses with some regularity. In processing the abstracts, the FBI was careful to duplicate the improper withholding in the underlying records, as I correctly informed the Court it would. This is the only reason processing the abstracts took so long.

178. Document 145A is the abstract for Serial 6022. The withholding of information is under claim to (b)(7)(C), "to protect the identity of an individual who had information concerning an alleged conspiracy to assassinate Dr. King, as well as the identities of this individual's associates, all of whom the FBI were seeking for interview." This appears to be another one of the records pertaining to the Powell brothers and "Ralph."

SECOND PHILLIPS AFFIDAVIT

179. In his second affidavit Phillips pretends to rebut the allegations of my counsel's August 20, 1980, Memorandum to the Court and the August 27 Notice of Clarification. Those come from my August 15 testimony, which was based on my review of some 400 pages of long-withheld field office inventories of the FBI's extensive campaigns against Dr. King and his associates and records pertaining to his assassination. However, rather than rebutting what I alleged, Phillips evades where he does not actually confirm the withholding and the intent to withhold. He includes details that support my allegation that I was deceived and misled into agreeing to the Stipulation and of violation of the Stipulation.

180. There is no way of knowing what of Phillips' affirmations is of his own knowledge and what is his version of what others told him. He says he depends on "information provided to me." He also states that he is completely familiar with this case as it relates to the FBI and that he has reviewed all the records and correspondence. This either is not correct or Phillips is untruthful because he swears to what is contradicted by those records and that correspondence.

181. If he is familiar with the records, correspondence and all aspects as related to the FBI, then he is aware of the allegations in my many affidavits. Several of them pertain to matters included in his affidavit. Those affidavits have not been refuted, even addressed. They are undisputed. If he has read the correspondence, then he is aware of the fact that I raised numerous questions with the FBI, some pertinent to the subject matter of his affidavit, and that the FBI did not respond to them, as it acknowledges it was required to do under the Stipulation. Phillips also does not respond to them.

182. In his Paragraphs 3, 4, 5, 6 and 11 in particular and elsewhere, Phillips provides evidence of the deception practiced on me to entice me to agree to the Stipulation and of the violation of that Stipulation by the FBI.

183. In stating (Paragraph 3) that "This Stipulation, inter alia, provided that certain files from eight named FBI field offices would be made available to the plaintiff," what Phillips confirms is that I was led to believe that those records would be made available to me without further litigation if I agreed to the Stipulation. This is what was represented to me to get me to agree to the Stipulation and the waiving of a Vaughn showing.

184. He establishes that this was deception in his Paragraphs 4 and 11, in which he confirms my undisputed prior affidavit on that matter by stating that in fact the processing of field office files began well before the Stipulation (Paragraph 4) and by dating the beginning of the Memphis records processing at July 7, 1977 (Paragraph 11). He also states (Paragraph 8(D) that all the Memphis records were released to me on September 29, 1977. This confirms the deliberateness of the violation of the Stipulation, which required that in accord with prior practice records be provided to me as processed, in easily manageable segments. (Practice had been to average about 400 pages per release. This permitted careful examination.) As my uncontested prior affidavits state, records processed in July and August were withheld until the end of September, then shipped in a single package so large I could not handle it. I received it the last day permitted by the Stipulation. Some of those records, a considerable portion of them, were actually processed prior to the agreement to the Stipulation. All were withheld until the page total was about 6,000 pages.

185. In Paragraphs 3 and 5 he confirms another and deliberate violation of the Stipulation, one I called to the attention of the Court and the defendant in the affidavit I provided after receiving records responsive to my Privacy Act request from the New Orleans office. I then learned of the unauthorized revision of the Stipulation by FBIHQ. Among the changes not agreed to is modification of the description of the records of which copies need not be made. The Stipulation, as quoted in Paragraph 3, says "duplicates of documents already processed at headquarters" need not be copied but that what was missing at headquarters would be provided, "as well as copies with notations." This clearly states <u>any</u> notation. However, FBIHQ, without consulting me and without authorization, altered this, as Phillips, apparently without so intending, acknowledges at the end of Paragraph 5, where he states that the various field offices did not send to FBIHQ for processing what they believed they had "sent to FBIHQ or the Memphis Field Office" and that, instead of sending documents with <u>any</u> notation, they sent only those with what they regarded as "containing <u>substantive</u> notations." The word "substantive" does not appear in the Stipulation. This was never discussed with me, and from the disagreements that existed between the FBI and me by the time of the Stipulation, I would never agree to allow the FBI to decide for me what I regard as "substantive."

186. Phillips' quotation of the Stipulation includes other provisions the FBI violated. It was not required to process exact "duplicates or documents already processed at headquarters." This required that there be a check and comparison, because without checking and comparing there is no way of knowing whether any document is a duplicate or whether it holds a notation or whether it was actually processed and provided from FBIHQ. However, the FBI never made any any such comparison or check of any kind. It assumed that there were no notations and that what the field offices believed had been sent to FBIHQ not only had been sent but had been received, had been preserved, had been processed and had been released to me. The similar practice in the case of the assassination of President Kennedy, when the FBI was finally forced to prove its assumptions, resulted in its admission that some 3,000 pages it assumed had been received at HQ and processed and disclosed to me in fact could not be found at HW and had not been provided to me. With that as a percentage, in this case one would expect about 1,500 pages not to have been provided.

187. That the FBI did not check and decided to withhold records on the basis of the belief that they had been "sent to FBIHQ" is stated in Phillips' Paragraphs 4 and 5 and elsewhere.

188. Phillips adds additional conjecture and evasiveness in Paragraph 6, where he acknowledges that "Several items listed in plaintiff's Memorandum (of August 20, 1980) ... were not provided to plaintiff from the respective field office files, because they were made available or would be made available ... through release of FBIHQ and/or Memphis Field Office records." There was no check to determine whether or not these records were duplicates and were provided.

189. That the FBI was well aware of the fact that its FBIHQ MURKIN file was not complete and intact is reflected by other language Phillips quotes from the Stipulation. It required that "attachments that are missing from headquarters documents will be processed and included if found in field office files." This clearly reflects the fact that many records are missing from FBIHQ files. It also reflects the need to make a careful check of the field office files to determine whether they hold duplicates of any of the many missing FBIHQ documents.

190. It is obvious that the Stipulation envisioned a careful check and comparison and that the language of the Stipulation required this. It is equally

obvious that neither Phillips nor anyone else attests to any such check and comparison. To the contrary, Phillips provides tacit admission that the FBI merely assumed and guessed what should have been provided from FBIHQ records. There is no way that Phillips or anyone else can attest that such records were provided without the check and comparison that was never made. There thus is no way that Phillips can attest that any of the records involved in my testimony of August 15, 1980, or subsequent Memorandum were actually provided without this check and comparison. The fact is that, as my uncontested prior affidavits reflect, field office inventories list records not provided by either FBIHQ or the field offices. This is particularly true of the first of the field offices Phillips lists, Atlanta (Paragraph 8). I have provided copies of records reflecting the fact that FBIHQ did not have copies of records inventoried by Atlanta and that Atlanta did not include them in the records it sent to FBIHQ for processing and release.

191. The inventories of several field offices, including Atlanta, list separate files of cost data. This is significant information that is not otherwise available. While it is true that scattered throughout some 53,000 pages there are cost data records, it also is true that as a practical matter these are not retrievable, even if they are complete as released. Phillips merely assumes that, because he believes all such information was sent to Memphis, all of it was released to me. He does not know and he has no way of knowing. Because of the importance of this cost data, in 1977 I asked the FBI for its recapitulation of it, which is not in what I received. It has not been provided. It is obvious that, even if presumed to be duplicative, it is less troublesome and less costly to merely xerox a small file that requires no searching and is not within any exemption than to contest or litigate the issue.

192. With regard to the Memphis office, there is no basis for assuming that all pertinent records that reached it were provided to me. The case record and my extensive appeals identify important records known to have existed that remain withheld and are not accounted for in any way. This is stated in my affidavits and is undisputed. It is included in my appeals that are ignored.

193. As with all offices, with regard to the inventoried records of the Chicago office (Paragraph 9), Phillips assumes that, because he believes they all

should have been sent to FBIHQ, all were provided to me from FBIHQ records. He has no way of knowing. Under the Stipulation I was to have received all records pertaining to the various members of the Ray family. (There is also a separate Item of the request seeking all records of any surveillance on any Ray.) I was assured that because they came from St. Louis all records would be provided from the St. Louis records. This turned out to be false. All records were not provided from St. Louis files. My prior affidavits identify FBI records that were and remain withheld from me. I know of those records and saw copies because they were provided to others, including Rays. I provided a separate affidavit after I had access to some of the extensive disclosures made to Jerry Ray, meaning to Mark Lane, who paid for those records with his check. These include records of surveillance on Jerry Ray and others not provided to me from any source. Jerry lived in Chicago. I learned from him of contacts with the FBI that are not reflected in any of the records provided to me from either Chicago or FBIHQ files.

194. In what Phillips states with regard to my informing the Court of pertinent Memphis records not provided, there is acknowledgment of noncompliance and self-exposure of the intendedly incomplete searches. It amounts to additional acknowledgment of my having been deceived and misled in the Stipulation. It appears that he did not expect either the Court or me to read his affidavit.

195. Two files listed in the inventory of records ordered by FBIHQ on December 9, 1975, his exhibit D, are Memphis files 100-4105 and 149-121. The first is described in that inventory (Paragraph 11) as a file on Dr. King whose content "includes activities in Memphis area March and April." The second is of a "threat to bomb plane on which King would return to Memphis." Both are clearly pertinent in this instant cause and clearly should have been provided. Phillips' explanation of why they were not provided is not that a search was made for them or that they did not surface in any search or that they are not pertinent but that a subsequent "review of the four applicable Memphis index cards (copies of which are attached as Exhibit E) does not indicate that the two above files would have been responsive to the above instructions from FBIHQ of July 7, 1977, which were established pursuant to the Stipulation."

196. Phillips is wise enough not to try to explain the impossible. Instead, he assumes that he would not be challenged or that the FBI would continue

to get away with anything so he does not explain how the "instructions from FBIHQ of July 7, 1977" could have been "established pursuant to the Stipulation," which was not until a month later. Obviously, this cannot be true.

197. The instructions of July 7 were prior to the Stipulation, which was not agreed to until August 5. However, pursuant to those July 7 instructions Memphis did forward records. Prior to the Stipulation many if not most had already been processed. Those later described as "previously processed" were withheld and these withholdings had to be accommodated in the Stipulation because without agreement or justification most of the records had already been denied. In violation of the later Stipulation, all were withheld until the end of September. (My earlier affidavit details the dates of processing.)

198. Phillips does not deny that from the descriptions of the 1975 inventories these two files are pertinent in this instant cause. Instead, he states they were withheld and not provided because they were not interpreted as within FBIHQ's instructions controlling what would and would not be provided to me in this instant cause. This raises the most substantial questions about those instructions and what was and was not provided. It also confirms my allegations of noncompliance and intended noncompliance. Even today those records are still withheld.

199. Examination of Phillips' Exhibit E, those Memphis index cards, raises this same question about the nature of the searches (none has yet been attested to in this cause) and the withholding of pertinent records. All four index cards itemize information clearly having to do with assassinating Dr. King. They have such entries as "Plot to assassinate," "Assassination of," and "Threat to assassinate."

200. Bearing on the search made for Phillips and what can be depended on when only index cards of the FBI's selection are provided is the fact that what the Memphis office included in its own inventory and description of those files is not included on any of the index cards Phillips provides. In addition, those cards do include items that should have been provided in the 1975 inventory of political records and were not. Phillips' own interpretation of the 1975 inventory instructions is "all material concerning King." (His emphasis) There is an index card entry reading, "Press conference of Director J. Edgar Hoover with reference to Martin

Luther King." Apparently, as the politically wise field offices search for FBIHQ, this is not within "all materials concerning King."

201. Phillips does not explain away the failure to provide the two files of which I first learned from the 1975 inventories that the FBI resisted providing for two years after they were promised to me. He also does not provide any pertinent records from them or any other files.

202. With regard to the records of the New Orleans office (Paragraph 12), Phillips repeats my quotation of the itemization it provided in 1975 for its file 157-10673, including what I noted, "six bulky exhibits" in addition to the main file and subfiles. Phillips contents himself with the unsupported claim that "this is incorrect." His explanation and proof is "inasmuch as there are neither six items in the bulky section nor six bulky exhibits." He does not state how he knows that the New Orleans office could or would make an inventory for FBIHQ and make so serious a mistake or not correct it. He continues, "Actually, there are two bulky exhibits, one containing nine items from the hotel room of a James Earl Ray look-alike (157-100673-1B1) and the other (157-100673-1B2) containing toll records for five telephone numbers." He proceeds further to state that "'Bulky sheets' for these two exhibits (copies of which are attached hereto as Exhibit F) were provided to plaintiff ..." From this, by Phillips' own accounting, in 1B1 there are nine items, however many pages there may be per item, and five different sets of records in 1B2.

203. But if one examines Phillips' Exhibit F, which as provided to me is only two worksheets, what was disclosed to me consists of a total of only two pages, one for each of these Subs - hardly "bulky" and hardly what Phillips acknowledges exists. This is separate from his elimination of the four other bulkies New Orleans said it had when it made this inventory in 1975.

204. No exemptions are claimed on Exhibit F worksheets and they do not indicate any pages are withheld. Clearly, this is a fraudulent worksheet. It falsely alleges compliance whereas Phillips proves there is noncompliance. He also proves that he knows of the existence of pertinent New Orleans records not provided and still does not either provide them or claim exemption for them.

205. New Orleans, I emphasize, is the office from whose records on me I learned that FBIHQ sent excessively restrictive directions under the Stipulation,

employing language not included in the Stipulation and not provided for in it. FBIHQ also provided the affidavit to be submitted attesting to compliance, with the specific instruction that it need not be a first-person affidavit.

206. In Paragraph 14 Phillips goes into a confusing song-and-dance routine about the separate Washington office of whose existence I knew prior to the belated providing of the 1975 inventories, which include it. I did not allege that this second Washington office is "a 'resident agency'" as Phillips tries to suggest, and I did not believe there was one because the territory of the Washington Field Office is restricted to the city of Washington. All residencies of which I know are located in cities other than that in which the field office is located.

207. I attach as Exhibit 3 a copy of an FBI record I obtained outside of this litigation. It is a list of the abbreviations of the various FBI offices. There is only one city for which there are two entries, of different abbreviations, Washington. It is WA for one office and WFO for the other office. WFO is the usual abbreviation for Washington Field Office.

208. I see nothing in the Phillips explanation or his Exhibit G to explain this away or to explain away the files inventoried as WF, not WA, in addition to WFO. In all the instances in his Exhibit G, some office other than Washington is the Office of Origin (OO) and thus his explanation also is not pertinent because this is the normal situation and does not require an "auxiliary office" to service the Office of Origin.

209. Phillips' Exhibit G does perpetuate an improper and unjustifiable withholding. He withholds only to be consistent with the unrectified improper withholding in the records as originally disclosed. The matter is public domain, if only because it is, without expurgation, in the case record. In this Phillips underscores continuing withholding in violation of the Stipulation.

210. The names withheld under fictitious claims to (7)(C) and (D) are Gaines and Harris. Gaines is neither a confidential source nor an only source. The Phillips exhibit states clearly that the Washington Field Office has a tape recording it withholds and continues to withhold after all I have provided on appeal and in court. This is a tape recording of the drunken confession of a man who represents that he was an official of the union whose strike Dr. King went to

Memphis to support. He drinks to excess because he had advance knowledge of the assassination. What can account for the various FBI contrivances for improper withholding is his pointing an accusing finger at one who served the Department and FBI in their efforts to get Jimmy Hoffa.

211. The FBI's explanation for withholding this tape is ridiculous, that a tape is not a record. However, under date of December 3, 1980, the FBI sent me a tape in another case, acknowledgment that tapes are records. That letter bears Phillips' initials.

212. Phillips is cute when he gets to Savannah (Paragraph 15). He never at any point comes into contact with reality. He at no time addresses what I testified to when Department counsel declined to cross-examine me. He makes no reference to and flies into the face of the FBI's own inventories. The Court placed my summary of them in the record. It is apparent that his intent is to deceive, mislead, misrepresent and avoid the actual purpose for which he supposedly prepared his affidavit - facing the question of whether or not pertinent records remain withheld.

213. As stated above, there are surveillance Items of the requests. No proper search has been attested to. None has been made. In the 1975 inventory it is clear that the field offices have a formula for hiding surveillance information in unlikely places, like the "66" or "administrative matters" file, known as "admat." Ms. Fruitt was cross-examined about this at the August 15 calendar call. Savannah is one of the field offices that listed admat files holding surveillance information. Pretendedly, Phillips looked into the Savannah situation.

214. Two of the persons listed in my surveillance Items are J. B. Stoner, who was counsel to all the Ray brothers at one time or another, and Jerry Ray.

215. Phillips makes no reference to my testimony, the Savannah description of its files or the surveillance Item of the request. He limits himself to "documents relating to the subject matter," which to the FBI means only MURKIN records, despite the fact that MURKIN is not mentioned in the requests. He accounts for 14 records in 44-1768. He suggests but is careful not to state that there are <u>only</u> 14 in that file. At no point does he refer to any surveillance records. He thus completely evades all that is relevant. He also does not deny that there are surveillance records on Stoner. He cannot because the Savannah office inventory

accounts for some of them. He makes no reference to any "66" files.

216. The Savannah inventory describes the one file to which Phillips refers, 44-1768, not as having only 14 documents but as of three volumes, consisting of 315 Serials. The inventory description includes the statement that this file has "some information concerning J. B. Stoner's defense of subject as his attorney and contacts with subject's brother Jerry Ray." This description precisely fits information to have been provided to me.

217. There is no way of knowing what the Savannah files really hold because it has separate Stoner and Ray files and its inventory descriptions and listings were so inadequate FBIHQ had to phone it on December 15 to demand more. Thereafter, Savannah accounted for an "admat" file. This supplement states that all kinds of coverage, including electronic and live informant, is included in admat files. No admat file has been searched in this instant case although there are Items of the request requiring it and I filed appeals seeking it.

218. If Phillips had set out with the purpose of deceiving, misleading and misrepresenting to the Court, he could hardly have made a better effort.

219. Department counsel is well aware of the details of these Savannah and other matters. Ultimately, he provided the inventories - or at least claimed to. He was present at that calendar call. He presented Ms. Connie Fruitt as a witness in an unsuccessful effort to refute what I presented from the December 1975 field office inventories. He tried to prevent her cross-examination about some of these matters. He has the transcript available to refresh his recollection. And, according to the policy statement issued with some ostentation by Attorney General Bell, he is required to know that what he files is truthful and accurate, as is required of him by the Federal Rules.

220. Phillips concludes his affidavit with what he presents as a courtesy: "For plaintiff's assistance in locating the previously released items from the materials provided to him in connection with this litigation, the following is an itemization of the documents reviewed by me in connection with these Savannah Field Office materials." In his listing Phillips is careful to omit the one means by which they can be located, lost as they are in the mass of 53,000 pages - their serial numbers. Providing a list by date is utterly meaningless, as the FBI acknowledged in the JFK case by providing a list of cross-references so that those

records withheld as previously processed could be identified and located.

221. Throughout there is the permeating false pretense that the only pertinent records are those called MURKIN.

222. In almost all particulars Phillips' affidavit is contradicted by my earlier affidavits and testimony.

223. As my previous affidavits and testimony do, the foregoing paragraphs reflect why this long case is still before the Court. The only choice permitted by the defendant, after five years, is accepting noncompliance and violation of the Act.

224. Early in this long case it became apparent to me that the FBI was determined to stonewall and to resist compliance to the degree possible. I made any number of efforts to work out problems. Most were contrived by defendant. I met with the FBI and its in-house counsel and then AUSA John Dugan. I provided lengthy and detailed communications, I provided copies of FBI records and other proofs indicating the existence of pertinent records not provided and illustrating improper withholdings. I offered a consolidated index of the books on the subject. I offered my own card file index of the transcripts of the two weeks of the evidentiary hearing in federal district court in Memphis. Both were refused. The only purpose served by this refusal was to enable the FBI to withhold the public domain, which it did extensively. I provided xeroxes to prove the public domain was withheld but not one of those many improper withholdings had been remedied. I tried to work out compromises so that this case could come to an acceptable end. I did not expect complete compliance, which the FBI will not under any circumstances provide. I sought reasonable compliance. The FBI and its counsel rebuffed every effort. It permitted only a Hobson's choice, between accepting noncompliance and resisting its efforts and contesting so that there could be something closer to reasonable compliance. It is the Department, the FBI and stonewalling, misrepresenting counsel who caused the prolongation of this case and who persist, as with their present filings, in prolonging it still more.

225. Except when there was no alternative, the FBI and its counsel ignored both the Court's directives, as with the June 10, 1976, Order prohibiting the withholding of the names of public officials performing public responsibilities, and its requests, like having Mr. Shea put in charge. The Court solicited the

cooperation of the parties with Mr. Shea. However, despite assuring the Court that she would report the Court's desires, when we left the courtroom Department counsel refused to go to Mr. Shea's office with my counsel and me. At no time since has any Department counsel agreed to meet with Mr. Shea and my counsel and me. On my part, I did as the Court indicated desiring. I extended to Mr. Shea unstinted cooperation, as he has attested in his testimony and reports. I provided him with countless documented appeals to assist him, at extraordinary cost in time and effort. I met with him and his staff whenever they desired it.

226. That Mr. Shea has not acted on these appeals and has not implemented his reports indicates that the Department has immobilized him in this matter. However, while I have many disagreements with Mr. Shea and do not agree with much in the Schenefield letter of December 16, 1980, for which he is responsible, I believe he can bring about a reasonable end to this officially stonewalled case. But for him to be able to do this he must be ordered by the Court, must have independence, and the Department and the FBI must accept that, as I also would.

227. If he agrees to listen to both parties and then is empowered to see to it that what he believes should be done is done, Mr. Shea should be able to bring this tortured and costly case to something approximating a reasonable end.

228. However, the Department also sees to it that he is seriously understaffed. In order to be able to perform this duty, he would require additional staffing. The only reason he does not have an adequate staff is because the Department and the FBI and all who fear it do not want him to be acting on appeals from what they know to be improper withholdings. In order for him to complete the administrative appeals in my JFK case, I had to agree to his suspending action on many other appeals that were years past their place in any list based on the time of filing.

229. If he is adequately staffed, empowered to act and assured independence, I will be bound by his decisions if defendant is, even though he is defendant's employee.

ADDITIONAL INFORMATION ABOUT DOCUMENTS 25A and 27A

230. As I state and explain at the beginning of this affidavit, the kinds of searches I have made in the past are now impossible for me because of my condition and lack of help. To fully and adequately inform the Court, for my

affidavit pertaining to the Department's April 25, 1980, Motion I searched the records disclosed in the Lesar case by the Office of Professional Responsibility (OPR). When I completed the draft of this affidavit and while my wife was retyping it, I phoned Mr. Lesar about several of these sample records, two that I indicated are familiar and withhold what the FBI itself disclosed. His file of the OPR summaries of the FBIHQ MURKIN records reveals that the OPR also disclosed what the FBI first disclosed and now withholds and the obdurate Phillips swears must be withheld. Document 25A is Serial 4619. Exactly as I believed (Paragraph 134 above), the withheld name is that of Frederick John Schwartz. The information the FBI disclosed about him, along with his name, is defamatory. In Document 27A, Serial 4958, the name is as I state above (Paragraph 135), that of Eloise Witte. In these instances, bitter-ender, swear-to-anything Phillips insists under oath that those disclosed names must be withheld. In effect, he also swears that they had not been disclosed. With such affiants, if their affidavits are accepted by the courts, no case can ever end except with the raping of the Act and noncompliance.

231. My fee waiver revocation appeal, first referred to in Paragraph 21 on page 5, is attached as Exhibit 4.

HAROLD WEISBERG

Frederick County, Maryland

Before me this 6th day of January 1981, Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.

LILLIAN WEISBERG NOTARY PUBLIC FREDERICK CO., MD.

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

C.A. 75-1996
EXHIBIT 1

Document Number 34A - (HQ MURKIN)

Document number 34A is an unrecorded serial in 44-38861, consisting of a three-page internal memorandum from Mr. Deegan to Mr. Gallagher dated September 3, 1976.

Deletions in this document were made pursuant to exemption (b)(1) to protect information which is currently and properly classified. (See paragraph 11, supra, and the attached affidavit of SA Donald R. MacDonald.)

Information appearing in the second paragraph on page 1 and the second and third paragraphs on page 3 were also previously withheld pursuant to exemption (b)(1). These paragraphs have been declassified and are being released with no deletions.

CONFIDENTIAL

C.A. 75-1996
EXHIBIT 1

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

1 - [illegible]
1 - J[illegible]
1 - R.J. Gallagher
1 - T.W. Leavitt

DATE: 9/3/76

1 - W.O. Cregar
1 - J.O. Ingram
1 - J.G. Deegan
1 - E.C. Peterson
1 - J.T. Aldhizer

TO : R. J. Gallagher

FROM : J. G. Deegan

SUBJECT: MARTIN LUTHER KING, JR.

PURPOSE:

[redacted]

SYNOPSIS:

The Department's Task Force requested the above-mentioned briefing which was afforded Senator Frank Church and selected members of the Senate Select Committee (SSC) on 11/5/75. Task Force leader believed the briefing would provide valuable information bearing on our basis to investigate King. Briefing provided to five members of the Task Force on 9/2/76 by Bureau representatives. Mr. Leavitt stressed importance of security involving the informant operation and that, in accordance with personal agreement, the informants have been told that the briefing was to occur. Task Force leader Fred Folsom stated his group needed to know only general aspects of informant operations relating to association of King and Stanley David Levison, which served as the basis to investigate King. Folsom agreed to allow the FBI to review any Task Force written report bearing on contents of the briefing. Task Force was given overview of informant operation, significant historical development of the CPUSA, information from the informant regarding Levison and his association with King, and pertinent current aspects of the operation. Task Force personnel asked numerous questions regarding the informant operation, but their main interest, which prolonged the session, concerned our investigation of King, influence of Levison upon him and communist influence on King and the Civil Rights movement.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

CLASSIFIED AND EXTENDED BY [illegible] REASON FOR EXTENSION FCIM II, 1-2.4.2 DATE OF REVIEW FOR DECLASSIFICATION

JTA:cjb
(19)

100-106670

44-38861-

NOT RECORDED
46 SEP 30 1976

CONFIDENTIAL

Classified by 6419 [illegible]
Exempt from GDS, Category 2
Date of Declassification, Indefinite

21 SEP 28 1976

84 OCT [illegible] 1976

34A

CONFIDENTIAL

Memorandum J.G. Deegan to R.J. Gallagher
Re: Martin Luther King, Jr.
100-106670

RECOMMENDATION:

None; for information.

JTA/PEW

APPROVED:
Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.:
Adm. Serv.
Ext. Affairs
Fin. & Pers.
Gen. Inv.
Ident.
Inspection
Intell.
Laboratory
Legal Coun.
Plan. & Eval.
Rec. Mgmt.
Spec. Inv.
Training

DETAILS:

[redacted] C

This Task Force, under direction of the OPR, has been ordered by the Attorney General to conduct a review of our inves gation of King. The Task Force leader, Fred Folsom, believed the briefing would provide valuable background information bear on initiation of the King investigation and that absence of such a briefing would leave a void in his group's review.

The briefing was conducted on 9/2/76 in the conferenc room of the Intelligence Division, between approximately 2:40 p through 5:00 p.m. Task Force members present were Folsom, Will White, Joseph Gross, James Walker, and James Kieckhefer. Burea representatives were T.W. Leavitt, D. Ryan, and M.J. Steinbeck the Intelligence Division, and S.F. Phillips and J.T. Aldhizer the General Investigative Division.

Mr. Leavitt began the briefing by stressing the importance of protecting the informants involved and that materi in the briefing was to be provided on a need to know basis only

Memorandum J.G. Deegan to R.J. Gallagher
Re: Martin Luther King, Jr.
100-106670

He indicated that, in accordance with a previous personal agreeme with the informants, they had been advised that the briefing was to occur. Mr. Folsom advised that his group, as an "arm" of the Attorney General, had a need to know but only in a "general" sens wherein information from the informant operation concerned King, Levison and the basis on which investigation of King was initiate

Mr. Folsom agreed to allow the FBI to review any Task Force written document or report bearing on contents of what was be furnished during the briefing.

SA Ryan gave an overview of the informant operation and discussed significant historical developments within the CPUSA. Phillips discussed basis for the King investigation and the relationship between Levison and King. Steinbeck concluded with pertinent current aspects of the operation.

Task Force personnel raised numerous questions concerning the informant operation, although their primary intere which prolonged the session, concerned our investigation of King, the influence of Levison upon him and communist influence on King and the Civil Rights movement.

C.A. 75-1996
EXHIBIT 2

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

December 16, 1980

James H. Lesar, Esquire
Suite 203
2101 L Street, N. W.
Washington, D. C. 20037

Dear Mr. Lesar:

This is in further response to the pending administrative appeals of your client, Mr. Harold Weisberg, from the actions of the Federal Bureau of Investigation on his requests for access to records of the Dallas and New Orleans Field Offices which pertain to the assassination of President John F. Kennedy.

As the result of extensive discussions between Bureau personnel and members of my staff, the F.B.I. has agreed to certain modifications of its initial actions on these requests. I have decided to affirm the Bureau's initial actions in part, to affirm the modified actions which will result from the discussions indicated, and to reverse the actions in one significant respect.

There was a relatively small amount of classified material which was actually processed by the F.B.I. pursuant to these two requests. Of the 113 pages and 142 individual paragraphs that were processed, the review on administrative appeal has resulted in the declassification of 29 entire pages and 36 additional paragraphs. As to the remaining classified material, the actions of the F.B.I. are affirmed. 5 U.S.C. 552(b)(1). This material has been referred to the Department Review Committee for consideration whether it warrants continued classification under Executive Order 12065. You will be notified of the results of this review.

Exemption 2 of the Act, 5 U.S.C. 552(b)(2), was used, either alone or in conjunction with 5 U.S.C. 552(b)(7)(D), to withhold source symbol numbers and informant file numbers. Such numbers are purely internal agency matters as to which the general public has no legitimate interest and the Bureau's use of this exemption for this purpose is affirmed. To the extent that exemption 3 of the Act, 5 U.S.C. 552(b)(3), was used, either alone or in conjunction with 5 U.S.C. 552(b)(7)(C), to withhold "rap sheets" and

the names of personnel of the Central Intelligence Agency, the actions of the F.B.I. are affirmed. 28 U.S.C. 534; 50 U.S.C. 403g. All uses of this exemption in conjunction with § 6103 of the Internal Revenue Code will be reconsidered. There is some question whether claims of exemption 6, 5 U.S.C. 552(b)(6), should not have been based instead upon exemption 7(C), 5 U.S.C. 552(b)(7)(C), given the investigatory nature of the file into which the records in question had been incorporated. On the other hand, the actual records are intrinsically exemption 6 material (medical records, etc.). In any event, the decision of the Bureau to withhold this information on personal privacy grounds is affirmed on the basis of both exemptions.

On a number of occasions, your client has questioned whether exemption 7 of the Act, 5 U.S.C. 552(b)(7), can properly be applied at all to records of the F.B.I. which pertain to the Kennedy assassination. In my judgment, these records of the Bureau do constitute investigatory records compiled for law enforcement purposes within the meaning of the Freedom of Information Act. Irons v. Bell, 596 F.2d 468 (1st. Cir. 1979). See also Weisberg v. Department of Justice, 489 F.2d 1195 (D.C. Cir. 1973), cert. denied, 416 U.S. 993 (1974).

The two exemptions most frequently cited by the Bureau to deny access to material within the scope of your client's requests were 7(C) and 7(D), 5 U.S.C. 552(b)(7)(C) and (7)(D). These exemptions were, however, used to deny access to two very different kinds of material. First, they were used to withhold the names of persons, or purely descriptive information pertaining to them, or minimal information furnished by them, to the limited extent necessary to prevent the disclosure of their identities. All such usages of these exemptions, specifically including the denials of access to the names of F.B.I. Special Agents in the more recent portions of the processed files, are affirmed. Second, these exemptions were used to deny access to significant quantities of substantive information. On the basis of the results of my staff's review, I am not persuaded that all such usages of these exemptions were justified. Accordingly, I am at this time reversing the F.B.I.'s actions as to all such withholdings and remanding them for de novo reconsideration, which will be carried on in close coordination with my staff. Prior to undertaking the actual review of these records, Bureau personnel will familiarize themselves thoroughly with the Report of the Warren Commission, the relevant publications of the House Select Committee on Assassinations, and the various other official, readily-available, authoritative reference sources pertaining to the Kennedy assassination. This kind of substantive information in these files will be released unless the need for continued withholding is clearly established. In

exercising the discretion which is vested in this Department whether or not to release material which is exempt from mandatory disclosure under the Act, I have concluded that the importance to the American public of the Bureau's investigation of the Kennedy assassination is too great for me to apply any less rigorous standard. All denials of access which were effected on the basis of exemption 7(E), 5 U.S.C. 552(b)(7)(E), will also be reprocessed, but the Bureau's reliance on exemption 7(F), 5 U.S.C. 552(b)(7)(F), to withhold the names of agents of the Drug Enforcement Administration was correct and is affirmed.

There are certain other aspects of these appeals as to which it has been agreed that further action by the F.B.I. is appropriate. With respect to the Dallas Field Office, the Bureau will now conduct an all-reference search on the assassination itself, on Lee Harvey and Marina Oswald, on Jack Ruby and on the Warren Commission. All hitherto unprocessed records on these subjects, whether contained in main files or see references, will be carefully screened and those which pertain to the assassination in any way will be processed. In addition, as a matter of agency discretion, the Bureau will conduct all-reference searches on George De Mohrenshildt and former Special Agent James P. Hosty, and will also attempt to determine whether there are any official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on "critics" or "criticism" of the F.B.I.'s assassination investigation. Any records located as the result of these searches will also be carefully screened and, if appropriate, processed for possible release to your client. With respect to the New Orleans Field Office, the Bureau will undertake a further search for a possible main file on David Ferrie, and will forward to Headquarters for screening and possible processing those portions of another file which pertain to Ferrie, Jim Garrison and Jack Ruby. In addition, as a matter of agency discretion, the F.B.I. will conduct a new search in New Orleans for any existing official or unofficial administrative files which pertain to the Kennedy case. The action of the F.B.I. in not conducting a specific search for records pertaining to Gordon Novel is affirmed.

As you know, numerous records in Dallas and New Orleans files were referred to other agencies and components of the Department of Justice for their views, with the request that they be returned to the F.B.I. for action. As the result of efforts by Bureau personnel and members of my staff, virtually all of those records have now been returned with the exception of those

sent to the Central Intelligence Agency. The F.B.I. has agreed with my staff that all of the unclassified referred records should be reprocessed. Although appropriate weight will be given to the views of the other agencies and components, the Bureau, acting in conjunction with my staff, will consider these records for possible release in light of the same standards being applied to all of the other records within the scope of these requests. Particular attention will be given to claims that material is barred from release by § 6103 of the Internal Revenue Code. At this time, I am specifically finding that the denial of access on this basis to the requests for assistance in the Kennedy investigation which were sent from the F.B.I. to the Internal Revenue Service was improper.

Of the more than 100,000 pages of records to which access was in effect denied on a "previously processed" basis, it has been established that some 3,000 pages may not in fact have been processed as part of the Headquarters files. These pages have now been processed. With respect to all other documents in this category, the Bureau will entertain requests for specific items, subject to your client's willingness to pay for them at the rate of ten cents per page. When the substantive text of the second copy of a record is the same as that of a previously released record, it is my conclusion that there is insufficient presumptive benefit to the general public to warrant a fee waiver as to such materials. To the extent your client can show that any of these second copies have independent significance, I will consider granting a fee waiver as to them on a retroactive basis. My decision on this point is without prejudice to Mr. Weisberg's pending appeal from the termination of his general fee waiver for Kennedy records, but it is final as to previously processed documents, regardless of what may be the final decision on that other appeal.

Lastly, there are various films and tapes in these files which were not processed for possible release to Mr. Weisberg. The Bureau will now consult with him regarding these materials and will process any which are of interest to him. Only in the event that he requests additional copies of items which have already been furnished to him will he be charged.

Judicial review of my action on these appeals is available to your client in the United States District Court for the judicial district in which he resides or has his principal place of business, or in the the District of Columbia, or in the Northern District of Texas and the Eastern District of Louisiana, as to records in each of these districts.

Sincerely,

John H. Shenefield
Associate Attorney General

cc: Mr. Harold Weisberg

C.A. 75-1996
EXHIBIT 3

ALBANY	AL
ALBUQUERQUE	AQ
ANCHORAGE	AN
ATLANTA	AT
BALTIMORE	BA
BIRMINGHAM	BH
BOSTON	BS
BUFFALO	BU
BUTTE	BT
CHARLOTTE	CE
CHICAGO	CG
CINCINNATI	CI
CLEVELAND	CV
DALLAS	DL
DENVER	DN
DETROIT	DE
EL PASO	EP
HONOLULU	HN
HOUSTON	HO
INDIANAPOLIS	IP
JACKSON	JN
JACKSONVILLE	JK
KANSAS CITY	KC
KNOXVILLE	KX
LITTLE ROCK	LR
LAS VEGAS	LV
LOS ANGELES	LA
LOUISVILLE	LS
MEMPHIS	ME
MIAMI	MM
MILWAUKEE	MI
MINNEAPOLIS	MP
MOBILE	MO
NEWARK	NK
NEW HAVEN	NH
NEW ORLEANS	NO
NEW YORK CITY	NY
NORFOLK	NF
OKLAHOMA CITY	OC
OMAHA	OM
PHILADELPHIA	PH
PHOENIX	PX
PITTSBURGH	PG
PORTLAND	PD
RICHMOND	RH
SAINT LOUIS	SL
SALT LAKE CITY	SU
SAN ANTONIO	SA
SAN DIEGO	SD
SAN FRANCISCO	SF
SAN JUAN	SJ
SAVANNAH	SV
SEATTLE	SE
SPRINGFIELD	SI
TAMPA	TP
WASHINGTON	WA
WASHINGTON FIELD	WFO

C.A-75-1996
EXHIBIT 4

7627 Old Receiver Road
Frederick, MD 21701

November 10, 1980

Mr. Quinlan J. Shea, Jr.
Director, Privacy & Information Appeals
Department of Justice - Room 6345
Washington, DC 20530

Dear Mr. Shea:

In response to my request for information pertaining to the FBI's revocation of the fee waiver awarded to me by the Department, I have received some records, most recently on the fifth, from Mr. Robert Ford of the office of the Associate Attorney General. The FBI and the Civil Division also provided some records. None of the covering letters states that all pertinent records have been provided and, in fact, all pertinent records have not been provided.

Where there is pretended quotation of my request, it is selective and incomplete. The apparent reason is that I did and do qualify for the fee waiver and there is no regulation that justifies the revocation.

There is prejudicial factual inaccuracy in some of the records. I believe this is not accidental, was deliberate and was designed to prejudice, mislead and intimidate higher authority in the Department. I refer to this further below. Here I report that I want to be in a position to exercise my rights under the Privacy Act to correct all these inaccurate and prejudicial records. I believe all the facts should be brought to the attention of the Associate Attorney General and I ask that you please do this.

The fee waiver revocation also pertains to matters in which I am represented by counsel. Mr. Lesar will write when it is possible for him. I have many other requests, some ignored by the FBI for more than a decade. They are not mentioned in the records provided, which do pretend to give the Associate an idea of the records potentially involved. Also missing is any reference to the request that encompasses potentially the largest number of pages of records, my request for the political records on Dr. Martin Luther King, Jr. (With fidelity to Orwell, the FBI refers to its dirty tricks against Dr. King, which included efforts to ruin him personally and professionally and to persuade him to kill himself, as "security" files. Actually, these are records of an enormous, police state-like domestic intelligence operation for which the baseless pretense of "security" was used to hide its anti-American nature.)

With regard to the King political request, the FBI tried to con me and possibly others with an entirely inaccurate letter in which it grossly and deliberately understated the number of pages involved. The FBI's misrepresentation is deliberate because before then I obtained a partial inventory of the records within that request. Incomplete as is this inventory, it is of about 400 pages. The false and deceptive letter and the inventory both came to me from the FBI's FOIA unit. You have prior knowledge of this from my prompt appeal. I recall no response from you, not even acknowledgment.

I do not know why the FBI and its counsel both undertook to underinform and misinform the Associate by omitting any reference to this 1977 request. The most obvious possibility is that the same kinds of irrelevancies and misstatements that were applied to my request for information pertaining to the assassinations cannot be applied to the King political records. It cannot be alleged that any of this information is included in the report of the House assassins committee. It is not.

The first of the records provided by Civil Division is not provided by the FBI although in it there is reference to the FBI and not to the Civil Division. It is the Jack Anderson column, as it appeared in the Washington Post of July 31, 1980, reporting the FBI's fee waiver revocation. If this is pertinent and responsive for the Department, it is pertinent and responsive for the FBI. The FBI should have pertinent information in addition to this clipping because the column discussed the item prior to publication so that the FBI could explain its position. The FBI has not provided any such record(s).

Documents XII and XIII as provided by the Civil Division are handwritten notes that lack any attachments. The first reads, "Tom, fyi, A." The second reads, "David, Please make sure that the cited procedural requirements are satisfied." Document XV is the 4/21/80 Dong to Alice Daniel memo which also refers to these "procedural requirements, if any" in paragraph 2. There also is a reference to these "procedural requirements" in Document XVII, another undated, unsigned note. "Procedural requirements" are within my request, the part that nobody responded to. These records are not attached in what was provided.

Also missing is whatever was attached to this undated Marty Wood to Bill Cole memo: "Attached is for your private (sic) use, in case you haven't seen Garvey's copy yet." At the time in question, Wood was an FBIHQ FOIA supervisor.

Instead, there is what is not pertinent and clearly is intended to be prejudicial, selective reference to Judge Gesell's decision in my C.A. 77-2155. Copies of excerpts are provided by several components. While it is true, as the opinion states, that the judge was acting only on what was before him, a fee waiver for the records sought in that litigation, it also is true that not fewer than six Department lawyers plus other employees know perfectly well that, in order to reach this decision, Judge Gesell had to and did make a finding of fact, that I do meet the prerequisites for the fee waiver.

Why this was withheld from the Associate and why he was led to believe other than this I think is too obvious to require any explanation. Moreover, all components have stayed away from this.

I also sought all information bearing on whether anything happened to change the requirements or to in any way indicate that I do not meet them. No such information is provided.

If Document XXI did not bear the name of W. G. Cole, I would have had little trouble suspecting he is its author because it resorts to the kind of dirty and deliberate misrepresentation that within my personal observation is characteristic of his manner of defending FOIA cases. One consequence, aside from

noncompliance, is the needless and costly prolongation of such litigation.

It is the most vicious kind of misrepresentation to allocate to me the FBI's estimated half-million-dollar cost of processing the records. To the knowledge of both the FBI and the Civil Division, most of those records pertaining to the assassination of President Kennedy were not processed for me. As they pertain to the assassination of Dr. King, these records are not responsive to my requests. More than three-quarters of the records included in Mr. Cole's figures are within these two categories.

The JFK records are those the FBI itself elected to release as part of its over-advertised promise to disclose all. They were not processed for me. The King assassination records are mostly the FBI's and Civil Division's substitution, over my repeated objection, for the actual items of my request. My actual request has not been searched as of today, or five years after the beginning of that litigation. Instead of responding to my request, the Department decided to process and disclose the FBIHQ file designed "MURKIN." It is not the file in which most of the records sought would be filed. I did not request the FBIHQ MURKIN file. And even as a substitute for my actual request - to which I did not agree - it was not processed for me only. It was placed in the FBI's reading room and it was provided to the House assassins committee and to others, including the press.

Moreover, all my FOIA requests are for records later determined to be part of historical case records. This is an entirely different situation that the Cole memo represents. Those were determined to be historical cases only when my requests could not be stonewalled any longer. The records are available to all, not merely to me. In fact, as the court noted in C.A. 75-1996, the FBI manner of doing this effectively denies me first use of the information I have to sue to get. While it keeps me busy litigating, the FBI keeps busy providing its special selections of the information I get to favored sources in the press. If illustrations are desired, I will provide them.

It is simply untruthful for Mr. Cole to represent to the Associate that the FBI spent a half million dollars processing records for me. It likewise is entirely improbable that, as Department counsel, Mr. Cole was not aware of the truth when he put other than the truth on paper for the Associate.

In his next paragraph he refers to my December 1979 request for the information provided to the House assassins committee, with horrendous details of estimated cost of processing the estimated 700,000 pages. He regards this as "an appropriate time to consider terminating Mr. Weisberg's FOIA fee waiver." He does not here refer to the dozens of other and much earlier requests to which the FBI has not responded, going back more than a decade, or to the King political files request which the FBI promised in 1977 it would provide, or three years before this fee-waiver revocation.

Now, Mr. Cole has personal knowledge of that matter because when I finally did obtain the FBI's incomplete inventory of King political records, it was Mr. Cole who provided it - all 400 pages of listings of them. If he were not seeking a prejudicial illustration, he would have used this to illustrate because if I were to request all of them the King political records are more voluminous.

"It appears that Mr. Weisberg is currently using his fee waiver to assemble the 'Harold Weisberg Memorial Archives' at the University of Wisconsin-Stevens Point" is the language with which Mr. Cole begins his next paragraph.

Either Mr. Cole has and withholds pertinent records or he has just fabricated this. It is not factually correct.

There is no such thing as a "Harold Weisberg Memorial Archives" anywhere. I have not set up any kind of memorial. I will deposit all my records at that university pursuent to a request made of me by the prestigious Wisconsin State Historical Society. But in no sense is this any kind of memorial and there is no other quid pro quo.

It likewise is a fabrication to allege that I use the fee waiver for any such purpose.

Most of my requests predate the fee waiver. My unmet JFK requests go back as much as 12 years, those pertaining to the King assassination only slightly less. The litigation by which I obtained most of the records was filed before the fee waiver. On this basis alone it is obvious that Mr. Cole just made this up to prejudice the Associate and succeeded in it.

Although I make these records available to anyone, in no sense have any of my requests been merely to accumulate paper. All are pertinent to my own work, the depth and extent of which are well known to the Department and the FBI.

Again, unless Mr. Cole just fabricated his next sentence, which I am confident is the case as well as his common practice, there are pertinent records not provided. The next sentence reads, "These archives (sic) consist mostly, if not exclusively, of documents received by him from the FBI and Department of Justice." Every word of this is false.

Mr. Cole has not obtained any pertinent information from me and he has asked for none. He could not have obtained anything like the quoted language from the university because it simply is not true.

As of now, what has been deposited at the university, except for a negligible number of duplicates copied at my personal expense, consists, to paraphrase Mr. Cole's fabrication, "mostly, if not exclusively, of documents" not received by me from either the Department or the FBI. By volume most of the records in that archive are not from me. I have provided perhaps 10 file drawers of materials, most of which have nothing to do with any FOIA matters. I have not deposited a single original record as provided to me by the Department or the FBI and I personally paid the cost of xeroxing the relatively few duplicates I have provided.

If Mr. Cole's fabrication had cash values in mind, his fabrication is no less wrong by that standard.

"Prior to the granting of the fee waiver," Mr. Cole continues, "Mr. Weisberg seemed content to search (sic) for documents that might 'prove' government complicity in the Kennedy and King murders." This is, for me and the field in which I work, a libel. I am the only so-called critic who regularly defends the various federal agencies, including the FBI, the Department and the CIA, from such charges when made by others, like Mark Lane. I have used the only recent coast-to-coast TV exposure I have had for this purpose, at some personal cost. And I have used any and all means available to me to rebut such allegations by others.

Example: When James Earl Ray escaped from Brushy Mountain Prison, I was in Dallas furthering my work on the JFK assassination. Getting to Dallas and obtaining the means of getting there are not easy for me. After three times turning down "Good Morning America," I finally agreed to go to New York and use the best time slot on that program for defending the FBI. What attracted the program's attention was my appearance on a Dallas station in which I had debunked the wild accusations of FBI complicity already made by Mark Lane and others. This is the exact opposite of Mr. Cole's dirty and professionally injurious fabrication.

I do not now and I have never "search(ed) for documents that might 'prove' government complicity" in the crimes. None of my requests can be interpreted this way. I know of no basis for believing there was "government complicity" in the crimes but if there were, that would be enough to assure that no records holding the proof would ever be disclosed - if they ever existed.

There is no limit to Mr. Cole's imagination as he warms up to his deliberate misleading of the Associate. He next alleges that I now am "interested primarily in assembling duplicates of every piece of paper in the government's possession ... for 'completeness' ... made possible by the fee waiver..."

There is no basis for any of this. It is all simply manufactured. If anyone applied the rule of reason, it would be obvious that using the same effort to obtain nonduplicates is more productive.

However, the poisonous effect of these concoctions is obvious, as is the intent.

I am 67 years old. For more than five years I have been aware of potentially fatal illness. My only regular income is Social Security. I have no help. I am not able to do most of my own filing and for several years have not been. The incomplete bills for my recent hospitalization and operations total more than $12,000.00. This is for two weeks and does not include the last two weeks. Now why in the world would anyone in my position waste any time or effort seeking duplicate records allegedly "for completeness" when there are so many thousands of nonduplicates? Nobody buys my file cabinets for me. So why would I run up the cost of them and related supplies and face all the extra work that is beyond my physical capability just for whatever Mr. Cole has in mind by "completeness?" And how about all the many requests not complied with which he does not mention?

In this regard it is worth noting that, in order to obtain the decision he clearly wanted from the Associate, Mr. Cole had to and did provide other misinformation, that no significant number of papers remain to be provided in the King assassination case, C.A. 75-1996. This is not true. For example, the FBI withheld, as "previously processed," many field office records. I appealed this because they are not duplicates. In the JFK case the FBI has provided cross-references, but not in the King case, although you found in my favor on appeal. It has revoked the fee waiver as it pertains to all records in that case. With the case still in court and with the possibility of an appeal, the information given to the Associate is at best dubious and at worst a deliberate deception of him.

It is defamatory for Mr. Cole to allege, entirely falsely, that because of the fee waiver I do not limit "searches (sic) to items of real interest to" me.

As stated above, most of my requests predate the fee waiver. Moreover, Mr. Cole has no basis for knowing what is of "real interest" to me in my work. He also has not asked. Clearly he has no knowledge of the thrust of my work. He misrepresents it entirely.

He concludes this memo with another effort to prejudice those who would make the decision he undertook to control by his combinations of untruths and fabrications:

"Mr. Weisberg claims that his work (to quote from one of his affidavits to the D. C. District Court) ... 'results in the exposure of official misdeeds, particularly by employees of the Department of Justice.'" On the one hand he conjectures that cancellation of the fee waiver "may well bring more such accusations" while on the other hand he conjectures that "another charge that may eventually be made is that the Department without a word of opposition allowed substantial tax dollars to be spent on the 'Weisberg Memorial.' This charge may well be more damaging where, as here, all the documents requested from the House Select Committee file have been released previously in their entirety to the Congress."

No tax money is being spent on any "Weisberg Memorial." This, too, is Mr. Cole's fabrication, made up to accomplish ulterior purposes by threatening, deceiving and misleading the Department.

Those records have not been "released," whether or not made available to the Congress. The FBI's claim is that, because the Congress had a chance to examine the records and did write a report, the purposes of FOIA are served. Actually, all the records not published are sequestered at the National Archives for another 50 years. Even the Department has been denied access to them. The committee's interests were narrow. It had no interest in most of the records in question. Suggesting that the records have been "released" is another attempt to mislead and misinform.

There is no explanation of this partial quote from an affidavit because Mr. Cole has it suggest what he cannot and does not say. I have indeed exposed official misdeeds, ranging from misleading the Warren Commission to the filing of false and misleading affidavits. I proved a series of misrepresentations to a court by Mr. Cole, who has yet to undertake refutation.

Had it not been for an FOIA suit I filed, the Department would not now be engaged in attempting to clean up deficiencies in the FBI JFK assassination investigation. The reason the Department now is supposedly conducting an investigation 17 years late is that the Dallas field office withheld important information from FBIHQ and the Warren Commission and covered itself in this by placing a false report in its files. I obtained that false report through C.A. 78-0322. It then was followed up on by friends of mine. They located the film the Dallas office examined at the time of the assassination and did not send to Washington. The Dallas report claims that this film ~~does~~ not show the building from which the FBI, prior to investigation, decided all the shots had been fired by Oswald alone. Actually, this motion picture has almost 100 individual pictures of that building. Not only the building - the very window from which the FBI claims that Oswald fired all the shots and the windows near it. The film the Dallas FBI claimed was of no value was, in fact, of the greatest value in any honest investigation. If, as the Dallas Morning News stated on publishing a selection of these frames of the

motion picture, they show more than one object in motion where the FBI claims Oswald alone was, this film proves that the official solution to the crime, dictated, dominated and controlled by the FBI from the outset, is not truthful and accurate.

(Among the exposures that stem directly from my work and my FOIA litigation is the proof that the Warren Commission itself was aware of and feared the FBI's domination and control and its intent for the commission to do no more than agree with the FBI's preconceptions. I published these Warren Commission records in facsimile, to the embarrassment of the FBI.)

From these few of the many available illustrations, it is obvious that the FBI has its own motives for stopping my work. "Stop" is the word it used more than a decade ago when it considered filing a spurious lawsuit against me. It was ordered on the highest levels that my FOIA requests be ignored. That it pulled all kinds of dirty tricks is now confirmed by FBI records that are now available, thanks to FOIA. One of these dirty tricks was making a Member of the Warren Commission an FBI informant. He reported commission secrets. Another was leaking information that would limit what the Commission dared do or consider doing. Still another is persuading the President that there was a conspiracy to assassinate JFK and that the CIA was involved in that conspiracy.

Naturally, the FBI is not anxious for such exposures of it to continue.

If the Department was sincere in its determination that the assassinations of the President and of Dr. King are important historical cases, then my efforts are of assistance to the Department in its announced intention of making all possible information available.

I established the existence of pertinent records the FBI denies exist or pretends do not exist. Some of the records on both assassinations now in the FBI's reading room are there only because of my efforts.

One of these once-secret records is currently and long will be of great value to the Department. It is a large index of the Dallas office records. Along with the cross-references my perseverance compelled the FBI to produce for those Dallas records, this gives the Department effective access to what the FBI has pertaining to the JFK assassination. The FBI withheld knowledge of the existence of this case index of 40 linear feet of cards even from the Presidential Commission.

If secrecy and stonewalling were not more important to the FBI than complying with the law, the FBI itself would have transferred this Dallas index to Washington as soon as the first JFK assassination request was filed. This would have saved the FBI and the appeals office much time.

Part of Documents XVII and XVIII appear to be withheld by placing a piece of paper over them rather than by visible blacking out. This also appears to be true of page 2 of Documents XXX and XXXI. (Civil Division does not post the exemption at the point of withholding so no exemption is claimed at these points and one can not be certain.) Elsewhere Civil Division attributes its withholdings (as do the other components) to (b)(5). There is no claim that a balancing standard was

applied, none that none of the withheld information is appropriate for discretionary release. I appeal these withholdings, particularly because this is an FOIA matter and because at least some of what is withheld may be inconsistent with the Cole/FBI line for "stopping" me and my work.

In all of these records there is not even a suggestion that I do not meet the prerequisites for a fee waiver. There is no citation of any regulation as the basis for the revocation of the fee waiver. I did seek this information. I therefore assume that there is no such basis for the revocation.

This, of course, is entirely consistent with Mr. Cole's assault on my integrity. His distortions and fabrications, which are professionally defamatory, serve to prejudice all those who may read them.

Although I am not a lawyer and cannot address these matters as a lawyer can, I am impressed by the fact that neither Mr. Cole nor any other Department lawyer, in what is now disclosed to me, addresses any legal questions as those of us who are not lawyers believe lawyers should.

What are the questions of law, regulation and precedent posed by the FBI's desire to cancel the fee waiver?

Is there any indication of ulterior purpose?

If the FBI considers any request excessive, has it asked for any revision or simplification in any effort to reduce cost, time required or possible duplication? (No, not once.)

Is this possible? (Of course.)

Are the requests for information that will be used for my commercial benefit? (No, and this is not even possible. Mr. Cole's inability to suggest that I seek commercial benefit suggests his motive in his false representations that I have established a personal memorial and that my requests are intended for the alleged memorial rather than my own work.)

Is the information sought primarily of interest to the public? (Yes, as both district and appeals courts have stated in several ways.)

The memos provided also go to some trouble to avoid presenting to the Associate any reflection of my professional reputation and of the work I have done. However, the Civil Division is well aware of it. In C.A. 75-0226 the Department counsel assured that Court that I know more about the assassination of the President and its investigation than anyone employed by the FBI. And pertaining to the King assassination, the Civil Division persuated that court to have me act as its consultant in my suit against the Department (C.A. 75-1996). These are unique credentials. They distinguish me from those generally known as conspiracy theorists, which I am not.

In addition to informing the Associate, I ask also that you forward a copy of this to Mr. Saloschin and his committee and any others who may have been influenced by the untruthful, unfactual, distorted and often fabricated representations by Mr. Cole.

I refer to the Department's not being able to obtain information from the House assassins committee. I have just received a copy of Mr. Keuch's October 7, 1980, letter to former committee chairman Stokes. The first of its four pages, attached, indicates the great trouble the Department had getting even what the committee printed, and this when the committee asked the Department to conduct investigations.

Pending receipt of still withheld information and my ability to exercise all PA rights, I ask that a copy of this be included with all copies of the pertinent records so that at the very least truth may be simultaneously available to those who are given Mr. Cole's untruths, distortions and fabrications.

Sincerely,

Harold Weisberg

Office of the Attorney General
Washington, D. C. 20530

7 OCT 1980

Honorable Louis Stokes
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman Stokes:

Your recent letter to the Attorney General regarding the House of Representatives Select Committee on Assassinations (HSCA) was referred to my office for reply. You expressed your concern that the Department of Justice has failed to promptly respond to the HSCA recommendations.

Regrettably, I must first object to your August 26, 1980 allegation that the HSCA "recommendations were made to the Department more than 18 months ago." In a March 24, 1979 letter to me, HSCA Chief Counsel and Staff Director G. Robert Blakey did promise to supply copies of the HSCA acoustics reports "within the next ten days to two weeks." Numerous subsequent telephonic requests to Mr. Blakey between March and September 1979 elicited additional promises that those acoustical reports and draft copies of the HSCA final report would be supplied to my office. On September 7, 1979, almost two months after the July 13, 1979 release of a copy of the HSCA final report to Bantum Books, Mr. Blakey informed us that the Department should purchase the 27 volume HSCA report from the Government Printing Office since neither he nor the HSCA staff had a copy of the set to refer to the Department of Justice. We promptly ordered those reports. To this date, there has been no official referral of the HSCA final report, recommendations, or scientific reports to the Department of Justice.

Between September and November 1979, Departmental attorneys reviewed the HSCA final report - initially the Bantum Books edition since it was available first - and all relevant FBI investigative reports. The Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), and National Security Agency (NSA) were asked to assist in a review of acoustics reports relevant to the Kennedy assassination. The CIA and NSA informed the Department that they did not possess the specialized equipment or expert personnel to assist in such a review. In late October 1979, the copy of the entire HSCA report was received from the Government Printing Office. Volume VIII, which contains

cc: Professor G. Robert Blakey

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

O R D E R

Upon consideration of defendant's motion for summary judgment, plaintiff's opposition thereto, and the entire record herein, it is by the Court this ____ day of _____, 1981, hereby

ORDERED, that defendant's motion for summary judgment is DENIED.

_____
UNITED STATES DISTRICT COURT