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MAR 24 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR, Clerk


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

PLAINTIFF'S MOTION TO COMPEL RELEASE OF CERTAIN
RECORDS DESCRIBED IN FIELD OFFICE INVENTORIES

Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court for an order compelling defendant to release copies of certain records described in inventories made of FBI field office files, as set forth in Attachment 1 to this motion.

A Memorandum of Points and Authorities and a proposed Order are attached hereto.

Respectfully submitted,



 JAMES H. LESAR
 2101 L Street, N.W., Suite 203
 Washington, D.C. 20530
 Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 24 day of March, 1981, mailed a copy of the foregoing Plaintiff's Motion to Compel Release of Certain Records Described in Field Office Inventories to Mr. William G. Cole, Trial Programs Branch, Civil Division, Room 3137, U.S. Department of Justice, Washington, D.C. 20530.



 JAMES H. LESAR

UNITED STATES DISTRICT COURT
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 U.S. DEPARTMENT OF JUSTICE, :
 :
 Defendant :

MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

(See Attachment 2, June 30, 1977 transcript, p. 32) In response, FBI Agent John Hartingh stated: "I personally do not have the authority, Your Honor, to agree to that on behalf of the Bureau." Ibid.)

FBI Agent Hartingh also told the Court: "Well, from our point of view, from the FBI point of view, everything that pertains to the assassination of Dr. Martin Luther King is in one file, the Mercken (sic) files." (Attachment 2, June 30, 1977 transcript, p. 31)

No inventories of FBI field files were produced at that time. Rather than admit that such inventories had already been made, Agent Hartingh engaged in diversionary tactics.

Subsequently, in August, 1977, plaintiff entered into a Stipulation which required the FBI to process the files of seven field

offices. Plaintiff's agreement to limit the search of field office files for King assassination records to MURKIN files was based on the FBI's representation that all such records would be found in the MURKIN files.

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

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

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

Subsequently, plaintiff modified his list so as to eliminate matters of peripheral interest. In addition, on August 20, 1980, plaintiff and his counsel became aware that the Department had previously offered an explanation as to why "Sub H" of the Memphis Field Office MURKIN file was not provided. Accordingly, as plaintiff noted in his Memorandum to the Court filed on August 20, 1980, he withdrew this item from his list.

On January 12, 1981, plaintiff filed an affidavit (executed January 6, 1981), in which he responded to FBI claims that some of the materials had already been made available and others had not been provided for other reasons. Plaintiff's affidavit, the relevant portions of which are found at Attachment 3, establishes beyond doubt that some of the materials listed in Attachment 1 to this motion are relevant to plaintiff's FOIA requests but have never been provided to him. For example, plaintiff swears:

195. Two files listed in the inventory or records ordered by FBIHQ on December 9, 1975, . . . 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.

(See Attachment 3) The fact that these are non-MURKIN records does not mean that they are not responsive to plaintiff's FOIA requests. Clearly they are. They also constitute one of many proofs that the FBI lied to plaintiff and the Court when it asserted that all records pertaining to the assassination of Dr. King are contained in a single file, the MURKIN file.

Plaintiff's December 23, 1975 request specifically sought records reflecting any manner of surveillance on a number of persons, including J.B. Stoner and Jerry Ray. As plaintiff noted in his January 6 affidavit:

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 me.

While there is no doubt the above-described materials of the Memphis and Savannah field offices have not been provided to plaintiff, defendant has previously submitted an affidavit by FBI Special Agent John Phillips which suggests, but does not actually

state, that some of the records listed in Attachment 1 to this motion have already been provided to plaintiff. This, however, is based on the supposition that plaintiff received copies of these documents either from FBI Headquarters or Memphis Field Office records released to him. But not actual check has ever been made in this case to determine the truth of this supposition. In another of plaintiff's FOIA lawsuits such a check was made, after plaintiff was able to prove the falsity of the FBI's "previously processed" claims, and it was found that thousands of pages of field office records had wrongly been withheld under the claim that plaintiff had already obtained them from Headquarters' releases. Moreover, it is known that a number of MURKIN Headquarters' records are missing or unaccounted for. (See Attachment 3, Weisberg Affidavit, ¶¶ 186-189)

In the case of the New Orleans Field Office, there are also serious discrepancies between what the inventory shows exists, what the worksheets show was provided plaintiff, and what the FBI now claims was released. As Mr. Weisberg stated in his January 6, 1981 affidavit:

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 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.

In view of the obvious discrepancies between what the New Orleans inventory shows, what Special Agent Phillips states, and what the worksheets reflect as having been provided, the simplest, easiest, and most economical way of resolving this dispute would be to send plaintiff copies of the records requested by this motion, rather than to haggle over whether they were in fact provided. Indeed, unless the FBI can demonstrate they all of them were in fact provided, the Freedom of Information Act requires their release.

Finally, with respect to the "cost data" submitted by the FBI field offices, plaintiff concedes that there are cost data records scattered throughout the some 53,000 pages of MURKIN records that have been released to him. However, as a practical matter, "these are not retrievable, even if they are complete as released." (See Attachment 3, Weisberg Affidavit, ¶191) Plaintiff has secured a publisher for a new book on the assassination of Dr. King. He seeks the FBI's cost data for use in his writing. Thus its release would fulfill a central purpose of FOIA. Obviously, even if presumed to be duplicative of materials scattered throughout the massive volume of MURKIN records already released, it is less troublesome and less costly to merely xerox these small

files than to litigate the issue. In addition, it should be pointed out that in 1977 plaintiff asked the FBI for its recapitulation of the cost data. No such recapitulation was in the materials which plaintiff received. (Attachment 3, Weisberg Affidavit, ¶191) Nor has any such recapitulation been received since plaintiff specifically requested it. Plaintiff does not seek to unnecessarily burden the FBI. If the FBI will provide its summary of the cost data, he will not insist upon having copies of these cost data files. If, however, the FBI is not willing to provide its summary of the cost data records, then plaintiff has no recourse but to contend that these cost data materials constitute a separate and unique record valuable to one engaged in research and writing on the King assassination, and to insist upon their release in toto under FOIA.

CONCLUSION

For the reasons set forth above, the Court should order defendant to release to plaintiff all records described on Attachment 1 to plaintiff's motion, except to the extent that they are subject to a bona fide claim of exemption under FOIA.

Respectfully submitted,

JAMES H. LESAR
2101 L Street, N.W., Suite 203
Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
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 :
 Defendant :
 :

O R D E R

Upon consideration of plaintiff's motion to compel release of certain records described in inventories of FBI field offices, defendant's opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, 1981,

ORDERED, that plaintiff's motion be, and the same hereby is GRANTED; and it is further

ORDERED, that within _____ days of the receipt of this order defendant shall release all of the records listed in Attachment 1 to plaintiff's motion; provided, however, that defendant may excise or withhold those materials that are exempt under the Freedom of Information Act.

UNITED STATES DISTRICT COURT

<u>Field Office</u>	<u>Description of records sought</u>
<u>Atlanta</u>	
File No. 44-2386-C	1 vol. consisting of xerox copies of transmittal letters of evidence to FBI lab and single fingerprint section of FBIHQ
File No. 44-2386-D	1 vol. consisting of xerox copies of FBIHQ Lab reports and single fingerprint section reports regarding evidence submitted
File No. 44-2386-SF-1	1 vol. consisting of data relative to cost data in investigating case
<u>Los Angeles</u>	
File No. 44-1574-Sub G	cost data
<u>Memphis</u>	
File No. 100-4105-Sub C	Martin Luther King, Jr. Security matters. Sub C consists of 2 vols., 66 serials. Includes activities in Memphis area March and April, 1968.
File No. 129-121	"Threat to American Airlines and Dr. Martin Luther King, Jr., Memphis, Tenn., April 1, 1968. DAMV. 3 serials on threat to bomb plane on which King would return to Memphis
<u>New Orleans</u>	
File No. 157-10673	James Earl Ray, AKA, Dr. Martin Luther King, Jr., Victim; CR--Conspiracy; UFAC Robbery; (MURKIN) 72 1A exhibits, 6 bulky exhibits; inserts and copies of FD 302s and inserts marked for indexing
<u>St. Louis</u>	
File No. 44-775-Sub II	cost data
<u>Washington</u>	
File No. 44-703-Sub C	5 vols., 51 items

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

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

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

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

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

did it promptly and in proper order.

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

THE COURT: Yes.

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

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

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

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

FBI AGENT: Listing the documents and describing them?

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

FBI AGENT: You want each serial inventory?

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

FBI AGENT: Each serial number?

MR. LESAR: Yes.

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

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

MR. DUGAN: Each page of that section?

MR. LESAR: No.

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

MR. LESAR: Just indicate the section and --

FBI AGENT: The section, like 89 sections.

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

Just a general description of what the section contains.

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

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

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

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

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

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

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

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

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

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

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

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

MR. LESAR: I don't know.

FBI AGENT: That is the type of information?

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

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

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 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 notⁱⁿ 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 instruction 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 only 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 inventor

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 circumstance 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