

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF ROBERT J. D'AGOSTINO

I, Robert J. D'Agostino, hereby declare and say as follows:

1) I am Deputy Assistant Attorney General for Policy and Planning of the Civil Rights Division (CRD) of the Department of Justice. By Civil Rights Division Memorandum 78-1, appearing at 43 Fed. Reg. 37686, August 24, 1978, and in accordance with 28 C.F.R. 0.50, Appendix J, the authority delegated to the Assistant Attorney General, Civil Rights Division, to grant or deny requests made pursuant to the Freedom of Information Act, was delegated to the Principal Deputy Assistant Attorney General, Civil Rights Division, and in the absence or unavailability of the Principal Deputy Assistant Attorney General, to the Deputy Assistant Attorney General for Policy and Planning.

The matters stated herein are based upon my personal knowledge and upon my review and consideration of information available to me in my official capacity.

2) On December 1, 1981, this court ordered the Civil Rights Division to search for and release the contents of DJ file 41-157-147; review DJ file 144-19-0 for any documents responsive to the plaintiff's FOIA requests;

release the "Memorandum to Attorney General re James Earl Ray Possible Evidence of Conspiracy"; and release the index of documents in CRD files concerning the assassination of Dr. Martin Luther King. This declaration sets forth the CRD action in response to the requirements of the order.

3) I have been informed by the records management personnel in the CRD Files Unit and in the Department's Justice Management Division that DJ file 41-157-147 does not exist; that such a DJ file number is invalid, and that the use or the appearance of the number is erroneous (see the Declaration of Robert M. Yahn). Therefore, search for and release of the contents of a "DJ file 41-157-147" is not possible.

4) We are aware that Mr. Weisberg has copies of several CRD documents upon which the number 41-157-147 appears. These documents are located within DJ file 144-72-662, the CRD file on the assassination of Dr. King. We do not know why the number 41-157-147 appears on the documents or what the number represents.

5) On advice of counsel, the FOI/PA Branch has not retrieved or reviewed DJ file 144-19-0, which contains citizen and official correspondence of a general nature about federal criminal civil rights either to, from, or about persons in the Northern District of the State of Georgia. The Division has been advised by counsel that the plaintiff, has withdrawn his request in so far as it applies to the contents of DJ file 144-19-0.

6) Pursuant to the Order of the court, the FOI/PA Branch has located and prepared for release the "Memorandum to Attorney General re James Earl Ray Possible Evidence of Conspiracy" as described in footnote 222 of the House Select Committee on Assassination's investigation into Dr. King's murder (volume XIII, at page 184). The document, dated September 13, 1968

(nine pages), is being released subject to appropriate deletions pursuant to FOIA exemptions (b)(5) and (b)(7)(c) (see Exhibit A).

7) FOIA exemption 5 has been held to incorporate privileges applicable to the civil discovery context, including the deliberative process privilege and the attorney work product privilege. The portions being withheld from the attached document pursuant to exemption 5 are properly protected from disclosure because they reflect the deliberative process in agency decisionmaking and constitute attorney work product. The document involved was produced in preparation for the possible prosecution of James Earl Ray. The excised information is of a predecisional, advisory and deliberative nature, reflecting the opinions and recommendations of a government official in the course of the decisionmaking process within the Executive Branch. To disclose such information would reveal frank communications between personnel of the Department of Justice discussing various litigative issues and strategies, thus jeopardizing the candid and comprehensive consideration necessary for the agency decisions to be made in such matters. All of the withheld material is also attorney work-product since it was generated by an Assistant Attorney General in reasonable anticipation of litigation. The documents include his private thoughts, recommended tactics, factual and legal analysis and evidence appraisals.

8) FOIA exemption 7(c) protects the personal privacy of individuals from unwarranted invasion due to the release of information contained in records compiled for law enforcement purposes. The names of citizens whose identity is not known to the public have been withheld from the attached document pursuant to exemption 7(c) in order to prevent the unwarranted invasion of their personal privacy.

9) Pursuant to the order of this court, the Civil Rights Division has begun the process of reviewing the index of documents in the Division's files which pertain to the assassination of Dr. King and related matters which was compiled by the FOI/PA Branch staff in 1977 in preparation for this litigation. The index consists of 382 pages. Most of the documents indexed originated with the Federal Bureau of Investigation (FBI). Others originated with the Criminal Division, the Community Relations Service, the Office of the Attorney General, the Office of Legal Counsel, the U.S. Marshal's Service, the Executive Office for United States Attorneys and the Civil Rights Division. In addition, some documents originated outside of the Department of Justice - in the Departments of State and Defense.

10) Department of Justice FOIA regulations (28 C.F.R. 16.4(a)) provide that each component of the Department must be permitted to make its own FOIA release determinations with regard to information originating in that component. Therefore, the Civil Rights Division is obligated to refer the index to the nine components listed in paragraph nine, supra before releasing the information in the index. In addition, it is our practice to consult with other Federal agencies prior to releasing information which they have provided.


11) The Civil Rights Division has already referred the index to the FBI for its review. The FBI has advised that due to the volume of the material referred, the FBI's review process will take at least ninety days.

12) The Civil Rights Division will process the balance of the material after consultation with the eight components and two agencies whose information appears in the index. To ensure that the maximum possible information is disclosed to the plaintiff without jeopardizing legitimately protected interests (e.g. the personal privacy of private citizens)

the FOI/PA Branch staff must also review the prior releases by this Division and the FBI to the plaintiff in this action

13) I am informed by the FOI/PA Branch staff that many of the indexed records are not responsive to the plaintiff's FOIA request.

I declare under penalty of perjury that all of the above is true and correct to the best of my knowledge.


Robert J. D'Agostino
Deputy Assistant Attorney
General for Policy and Planning
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530

Executed on December 21, 1981.

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MEMORANDUM FOR THE ATTORNEY GENERAL

Re: James Earl Ray -
Possible Evidence of Conspiracy

The FBI has reported that William Bradford Huie, a journalist and writer residing in Hartselle, Alabama, has exhibited to a ^{B 7 C} certain letters or notes which he has received from Arthur Hanes, counsel for James Earl Ray. According to ^{B 7 C} the documents are in Ray's handwriting. Huie advised them that he was given these papers in exchange for his underwriting of Ray's defense. He told ^{B 7 C} that the notes recounted, among other things, the plans made for the murder of Dr. King. According to his story, Ray was approached in Illinois and asked to commit the murder in exchange for a specified sum. The plans included flight by Ray to Mexico and/or Canada after the shooting - which, according to this version, Ray did not actually commit. Huie also stated that the material he had gathered would be used as the basis for an article to appear in the November issue of Look magazine. ^{B 7 C} were told that they would receive a copy of the proofs of this article on September 10.

In addition, newspapers and newsmagazines have, during this past week, reported that Huie has announced that he has paid a substantial sum of money - possibly \$25,000 - for Ray's "life story" in the form of a handwritten narrative that Ray has been writing since he returned to the United States. See Attachments A (Time magazine, issue dated September 13, 1968) and B (Washington Post, September 12, 1968).

If such letters are actually in Huie's possession, they constitute evidence of at least two violations of federal criminal law: (1) a conspiracy to violate Dr. King's civil rights (18 U.S.C. 241) - the offense which was the basis for the issuance of a federal arrest warrant for Ray, and (2) a conspiracy to violate the Fugitive Felon Act (18 U.S.C. 371, 1073) - established by the details on how Ray was to travel to Mexico and/or Canada after the commission of the murder.

144-72-662
file
AJL

EXHIBIT A

As a result of Warden v. Hayden, 387 U.S. 294 (1967), and Section 1401 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 Stat. 197, a federal warrant may now be obtained "to search for and seize any property that constitutes evidence of a criminal offense in violation of the laws of the United States." The notes and letters in Guie's possession are such evidence because they amount to voluntary written declarations by a principal participant in an illegal conspiracy admitting his guilt. The FBI would like to be given authority to obtain a search warrant for these documents in order to seize them.

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1. In my view, |

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2. A somewhat less difficult problem

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7. On balance, my recommendation is that we go forward with a search warrant under tight, specifically defined procedures like those outlined above.

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I am sending a copy of this memorandum to Fred Vinson and suggest that he and I discuss the matter with you at a brief meeting to obtain your judgment.



STEPHEN J. POLLAK
Assistant Attorney General
Civil Rights Division

Since the above memorandum was prepared, I received the attached memorandum from the FBI Director. It reports that the Bureau has interviewed Mr. Hule, at his request, and that Hule is willing to divulge the information he has received to date, provided the Bureau will give him some current, unpublicized photographs of Ray.

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