UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

AFFIDAVIT

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

1. On August 15, 1982, I executed the first part of an affidavit addressing defendant's bad faith in the matter of the consultancy agreement. This is the second part of that affidavit. In it I address defendant's bad faith as reflected in the transcripts of the calendar calls. I interrupted preparation of this affidavit for the preparation of a separate affidavit addressing defendant's bad faith as reflected in Defendant's Supplemental Memorandum in Opposition to Motion to Pay Consultancy Fee. I executed that affidavit August 16, 1982.

2. Throughout this long and costly litigation, litigation that was forced by defendant's bad faith in not responding to requests and appeals that go back to 1969, in person, through counsel and by many long and detailed affidavits I have attributed persisting and permeating bad faith to defendant. As the case record reflects, defendant decided not to respond to my FOIA requests. Also uncontradicted and uncontradictable in the case record is what amounts to defendant's plot to "stop" me and my writing because it is embarrassing to defendant. The scheme was to tie me up in litigation. While the FBI special agent (SA) who was to have filed a spurious libel suit against me to "stop" me - "stop" is his word and that of another FBI SA - chickened out and that suit was not filed, defendant's record in all of my FOIA cases is in accord with that 1967 plot.

3. It is a record of ignoring my requests and forcing unnecessary

litigation, of constant stonewalling, continual misrepresentation, of untruth after untruth, to every court, to the Congress and to my counsel and me. In the eight years since FOIA was amended - in part because of earlier bad faith of this character by this defendant - I have been forced to go to the appeals court in almost every case although in no case should this have been necessary. The resultant establishing of precedents inimical to defendant's FOIA postures has not discouraged defendant's forcing these appeals, not even when, as defendant's internal records state, some of defendant's lawyers warned about the possibility of establishing new precedents adverse to defendant's FOIA positions.

4. One illustration of this in this instant cause has to do with assertion of a copyright claim to withhold. Only after defendant lost in the appeals court was it disclosed that the alleged copyright holder had no objection to disclosure to me. In another of my current cases, this defendant made the same bad-faith claim to withhold for four years other allegedly copyrighted material without complying with the appeals court decision in this case.

5. Another of defendant's flauntings of bad faith of similar nature is defendant's refusal to abide by other appeals court decisions in my cases with regard to such matters as the requirements of a good-faith search. (More about bad faith with regard to searches appears below.)

6. By these and other similar indulgences in bad faith defendant has stonewalled this and my other FOIA cases, wasting and wearying the courts, my counsel and me, thereby also withholding pertinent and nonexempt information that is embarrassing to defendant.

7. Defendant's scheme has succeeded. I have not been able to write a book in the eight years since the Act was amended. And in these eight years, in not a single case was there ever a good-faith search to comply with my requests. In this instant cause, there still has not been any search - any at all - responsive to some of the issues of my requests.

8. As the first part of this affidavit states, in this part I address manifestations of bad faith as disclosed in the transcripts of the calendar calls of which I have copies. I prepare it from a summary of them I made in 1980 for my counsel before the first of the three surgeries that limit what I am able to do. The last transcript included in this summary is of February 26, 1980. There were

many subsequent evidences of bad faith and there were others at the calendar calls included in this summary, but because my purpose in preparing the summary did not anticipate my subsequent surgeries and the resultant limitations or the need to address bad faith as I now do, those many other demonstrations of bad faith are not included herein. What follows, therefore, is far from all the reflections of defendant's bad faith at the calendar calls.

9. I have tried to assemble this information bearing on defendant's bad faith by subject matter, but inevitably there is overlapping that cannot be eliminated.

THE CONSULTANCY

10. My review of this transcript summary discloses proofs of defendant's bad faith with regard to the consultancy that are not included in my August 16, 1982, affidavits.

11. Ms. Betsy Ginsberg was counsel of record at and after the May 10, 1978, calendar call. When she indicated (beginning on page 6) that all outstanding issues could be cleared up in 60 days, which was not true, she referred only to referrals when questioned by the Court. The Court stated about the consultancy, "I had assumed he was going to be paid on a regular basis per diem, per hour or whatever." Utterly destroying defendant's present false pretense that there was no consultancy agreement and about what I was to do under it, Ms. Ginsberg replied, "Apparently that is the case, your honor, <u>for his review of his notes</u> and for a list of deletions <u>and other kinds of problems that he is having</u>." (Emphasis added) She acknowledged existence of the agreement and said that under it I <u>was</u> to review my notes, as my counsel and I stated, and I was <u>not</u> to examine again all 44,000 pages of the FBIHQ MURKIN files, defendant's present false pretense of convenience. (Page 7)

12. Ms. Ginsberg followed with untruths and partial truths, "And, to date, the only communication that we have received was this motion for partial summary judgment." (Page 7) The case record is clear with regard to the falsity of her statement that the only "communication" defendant received is the motion. I wrote defendant repeatedly and in some detail and my counsel also did, and those letters are in defendant's case file. They also are in the case record in the Zusman deposition. Ms. Ginsberg had a problem with truth because <u>none</u> of my letters

received any response - not even an acknowledgment. I cannot conceive of Ms. Ginsberg's not knowing that her claim to not having "heard mention of a problem with the deletions" is inaccurate because they are numerous enough in the case record, with which she is supposed to have been familiar. They also are dealt with in my many letters to defendant and in my consultancy report.

13. My counsel noted that I had written the Civil Division about the rate at which I would be paid and that it had not even repaid the authorized expenses more than a half-year after I submitted a bill for them. (Pages 7-8)

14. Contrary to defendant's false pretense that there never was any consultancy agreement the Court stated, "I think it is a strange way for the government to behave." The Court wanted "this to be straightened out no later than the end of the week." The Court also stated, "I think it ought to be in writing wo there isn't any question about it. Certainly an offer that has been made, been accepted and has been started on is expected to be carried out or this Court expects it to be carried out. I would like to know by Friday what exactly the terms are and a copy of whatever has been sent to Mr. Weisberg is sent to the Court." (Pages 7-8) As is not uncommon in this case, defendant ignored the Court. Defendant did not send me a contract and defendant's records, disclosed under discovery, do not reflect that the desires of the Court were ever discussed or considered in any way.

15. On May 17, 1978, defendant's counsel launched another diversion and false pretense, that the consultancy was linked to the Stipulation, which it was not. (Page 2) At this point, and I believe for the last time, on behalf of defendant she described the Stipulation accurately as no more than "plaintiff agreed to forego his Vaughn motion if the Federal Bureau of Investigation met its commitments in processing which were outlined in that Stipulation." This is all the Stipulation ever was, but defendant thereafter, continuously and knowing better, misrepresented it. (More on the Stipulation appears below.)

16. On ~~January 12~~, 1979, nothing the Court wanted done having been done by defendant, I made efforts at discovery. Present defendant's counsel wanted all discovery postponed. When he got to the consultancy the Court interrupted him to state, "I don't know that there should be serious questions on it. It was handled in open court right here and, quite frankly, the Court feels the Department let down the agreement." (Page 8)

17. In response defendant's counsel disclosed his awareness of the existence and pertinence of records within discovery. Contrary to the instructions of the Court, he then withheld them until 1982 and then, despite a subpoena, until it was too late for their use in deposing Daniel Metcalfe. This resulted in further stonewalling and the complete waste of time and money required by the second Metcalfe deposition. He stated, "there are a number of documents that may relate to this that are in the form of memoranda between members of the Justice Department to which we might well wish to assert a privilege." (Page 9) (The content of these memoranda that defendant provided - and I have no way of knowing whether all were ever provided - is discussed in my August 16 affidavit.)

INAPPROPRIATE CLAIMS TO MOOTNESS AND UNJUSTIFIED AND UNJUSTIFIABLE MOTIONS FOR SUMMARY JUDGMENT

18. At several points, one of which I go into below, the Court referred to what defendant was doing as "obstructionist." (See, for example, Paragraph 63 below.) Making unjustified claims to mootness was obstructionist. Defendant began making this claim at the very first calendar call, on February 11, 1976. Defendant then claimed to be responding to my April 15, 1975, request only, although it is not the only request litigated in this case. However, with regard to my April 15 request, <u>defendant then knew that the required searches had not been made</u>. Those affidavits, like all my many other affidavits proving that defendant's affidavits were falsely sworn, have not been disputed. In fact, defendant, unable to back up this false swearing or refute my accurate attestations, merely ignored them. However, I later obtained defendant's internal records which prove beyond doubt that the false swearing, that all the Items of the April 15 request had been searched, was knowing and deliberate. SA Thomas Wiseman swore that SA John Kilty had made searches to comply with an Item that Kilty had written to Wiseman he could not and did not search. (Kilty also testified to this on deposition.) The fact is that as of today all the Items of that request have not been searched and there is not even a false attestation to a search to comply with the Items of my December 23, 1975, request. (A separate section on searches appears below.) The repeated claim to mootness, therefore, from the first, was made in bad faith.

19. AUSA John Dugan, then defendant's counsel, began the March 26, 1976,

calendar call by stating that "Subsequent to our last calendar call, we have had discussions with the plaintiff and the plaintiff's counsel, and the reason we did not file our motion was because it was my understanding on the assurances given - - well, I felt that the case would be mooted out." (Page 2) It simply is not true that I or my counsel in my presence ever said anything but the exact opposite of this representation of "assurances given" of mootness. The case record also is quite clear on this. If defendant provided any such assurances to defendant's counsel, those assurances were knowingly and deliberately false. In this untruth he also was ignoring the entire December 23 request and both of my requests of 1969.

20. He then informed the Court that "further investigation will take place in the Memphis field office, which is probably the only logical place where any of the files could be located." (Page 3) This also is enormously untruthful because all 59 FBI field offices had extensive files and defendant was well aware of this. It required another six years to overcome defendant's stonewalling and obtain copies of the inventories of these field office holdings, which are quite extensive.

21. These early claims to mootness were made despite the fact that excisions were made without accompanying claim to exemption. The Court stated 9page 10) that this was required. Nonetheless, in response, defendant's counsel stated that he did not want to "take too much of the Court's time, but when we last appeared in court, we indicated that we were going to file a motion to dismiss or in the alternative for summary judgment." when he started talking summary judgment again (Page 12), the Court stated that "isn't going to get you anywhere do don't waste your time on it." The fact is that as of today, despite the Court's instruction that copies of the worksheets on which these exemptions are posted must be provided, they have not been provided.

22. Defendant's counsel told the Court on May 5, 1976, that I had received "anything that came within the request of April 15." (Page 3) This was untrue and defendant knew it was untrue. But without the untruth he could not claim mootness.

23. At the May 18, 1976, calendar call I again provided the Court with copies of records in which defendant withheld without claim to exemptions. Once again defendant ignored the Court when the Court stated, "rather than buck a system, it is a lot simpler if the government would simply comply with it as rapidly as possible instead of filing myriad documents, giving reasons why - - In the final

analysis, they are going to have to be released - -" His reponse was, "I don't know how to respond to that." (Page 15)

24. Having told the Court that a search for compliance was being made in Memphis, he stated on May 5, 1976, that with the exception of the photographs "we are going to support the further position that this action is moot." (Page 5) Although he was corrected by my counsel, he insisted, based on a Wiseman affidavit, "that they (the FBI) have turned over everything in the FBI files that would come within the April 15 request, and we submit that portion of the case is moot." (Pages 6-7) Defendant knew this was untrue.

25. With regard to the photographs of the scene of the crime, Wiseman provided a false affidavit attesting that there were none. Defendant was unmoved by the Court's open disbelief. My counsel and I conferred with the FBI and I informed it that I knew from its sources and with certainty that it had crime-scene photographs. (I did not identify my sources but they were a high official of the Memphis Police Department and the responsible official of Time, Inc.) Wiseman had sworn that his search of the FBIHQ MURKIN file disclosed no such photographs. I informed the FBI that, if not at FBIHQ, they had to be at Memphis. This is what led to Director Kelley's promise of full and complete search in Memphis, a promise never kept.

26. Wiseman either did not make the search to which he attested and lied about it under oath, or, having meade the search and located not fewer than four sets of crime scene photographs, deliberately swore falsely to withhold them. The MURKIN files he attested searching hold the FBI's own two sets of crime scene photographs, those of the Memphis Police Department and those of Joseph Louw, the Time, Inc. photographs. No claim could be made to withhold the two FBI sets and they were provided later. The invalid copyright claim was made to withhold Louw's and a bad-faith "confidential" source claim was made to withhold those of the police. It certainly was "confidential" if I could - and did - tell the FBI, after it denied having any such pictures, that it had those given it by the police!

27. To compel disclosure of the Louw photographs after this Court ordered it, I had to go to the court of appeals, which ruled against the FBI. It then turned out that, in addition to not providing proof of copyright for the series of Louw photographs, Time, Inc., which was Louw's agent, had told the FBI in advance

that it did not fear loss of copyright from disclosure to me. Defendant's bad faith wasted much time for this and the appeals court, my counsel and me, wasted government time and money, and established a principle discussed in law journals. Simultaneously, defendant inflated its already bloated FOIA cost and time statistics with which amending of FOIA is sought.

28. With regard to other Memphis records, when I obtained partial compliance from the records of that office more than a year later, I learned that FBIHQ had sent it many records responsive to the April 15 request. But not a single page was provided as a result of this supposedly complete search.

29. On May 18, 1976, my counsel informed the Court, which also means defendant, that my April 15 request "has not been complied with, that there has been only partial compliance with each of the first three items and partial compliance on Items 5 and 6, no compliance on Item 4 and no compliance on Item 7 of that request." (Pgge 17) He added, with regard to a specific Item, "We have asked for the results of the spectrographic and neutron activation analysis. Mr. Weisberg says that we have not been given all of the results of those tests." (Page 18) As of the defendant had not even acknowledged the existence of spectrographic plates or NAA printouts, which are essential to those tests. And in 1978, when SA Horace Beckwith was the supervisor on this case, he did promise to provide the spectrographic plates. That has never happened.

30. When I was able to depose SAs Wiseman, Kilty and John Hartingh, who preceded SA Horace Beckwith as FOIA supervisor, the FBI did admit that no search had been made to comply with an Item of the April 15 request. Kilty testified that he had not made the search Wiseman had sworn he made. This, too, is in my ignored and undisputed affidavits.

31. With regard to Item 7, which requests the information the FBI gave other writers, I correctly identified one of the files to be searched as the FBI's 94 file. While it is described as "Research Matters," in fact, it is the file in which the FBI squirrels away its records pertaining to the press, its leaks, its propaganda and its lobbying and other contacts. When I asked the FBI if it would, belatedly, search the 94 records, both Ms. Ginsberg and present defendant's counsel, William Cole, refused.

32. One of the other writers identified in Item 7 is Jeremiah O'Leary.

Defendant claimed falsely that it had not given O'Leary anything. Records I later obtained disclose that, in fact, it provided him with what it termed "public Domain" information which he could and it did pretend he obtained from other sources. In 1978, when O'Leary was embarrassed by disclosure of this deal he had made with the FBI, which gave it censorship rights, he confessed that almost all of his information was provided by the FBI. Although this, too, is set forth in detail in my prior affidavits, the noncompliance persists and the necessary searches refused by defendant and defendant's counsel remain unmade.

33. With further reference to the spectrographic plates and NAA printouts, both of which did exist, years later defendant provided an incompetent attestation, the conjecture that these plates had been destroyed. Such destruction is strictly prohibited by general and specific FBI regulations I obtained later, in other litigation. No destruction of spectrographic plates is permitted in any case until at least five years after there is nothing to litigate. James Earl Ray was still in litigation when the alleged searches were made. Moreover, no unauthorized destruction of any information in any historical case, which this is, is permitted. The only exception is if the assent of the Archivist of the United States is sought and obtained. In this case it was neither sought nor obtained.

34. On deposition Kilty admitted the existence of pertinent information not provided to me as a result of his alleged and sworn-to searches: The NAA printouts, which he described as "Polaroids." He had located them but he never provided them. At the Kilty deposition I again requested these printouts. As of today, they remain withheld. No claim to exemption is made and none can be made. They are just withheld.

35. All of this and much more was known to defendant at the time untruthful representations were made to the Court in an effort to obtain an untimely summary judgment. Defendant knew that the case was not moot and that, at best, any motion for summary judgment was premature.

36. As of July 1, 1976, defendant's counsel was still pushing for summary judgment for the FBI. He said he would respond separately to allegations of noncompliance with respect to the Department divisions. (Page 12) Despite sworn-to claims of full compliance by the divisions (which my uncontested affidavits proved to be false), over the years, as I could identify specific files, defendant

dribbled out records that, by the time I received the last of them this year, <u>six years later</u>, totaled about a hundred times the number of pages disclosed at the time the claim of mootness was made.

37. The Court perceived the bad faith in this false representation and asked (beginning at the bottom of Page 13), "Why is it they are unable to comply? That is really the point. I just want them to comply so I don't have to keep after them." He interrupted her to claim, "I wish it were that simple." The Court stated, "It is that simple if they don't have anything to hide, and believe me, that is the position they have put themselves."

38. The Court was correct. In addition to the prejudice against me over my accurate writings and persistence in FOIA Matters, one of the reasons responsive searches were not made in this case is that the information sought is embarrassing to defendant. This is one of the reasons untruthful and, at best, premature claims to mootness were made. I cite a few of the embarrassing facts I have discovered in the records obtained in this case, limiting myself to only a few of them already in the case record and totally uncontradicted.

A) There was never any FBI investigation of the crime itself. This is contrary to the widespread belief fostered by the FBI that it conducted a most thorough investigation. This is not merely my interpretation after reading the entire MURKIN file - it is stated explicitly by the FBI. When it was under criticism, as the result of my work and others who followed up on it, for not having conducted an investigation of the crime, its defense, in its internal records, is that it conducted no more than a fugitive-type investigation.

B) The Laboratory work was thoroughly deficient and what is disclosed is contrary to the FBI's representations of it. The FBI claims it never even test-fired the rifle it refers to as the death rifle. Allegedly, to determine whether it had been fired, the Lab swabbed the barrel of a rifle it <u>knew</u> was <u>not</u> used in the crime and <u>could not be fired because of a defect.</u> But it made no such test on its so-called death rifle. Although it is claimed that Ray, using this death rifle, pushed out a windowscreen and left an impact on the windowsill, the FBI's Lab results state specifically that the evidence is to the contrary. (While I could go on and on at some length and in considerable detail, I mention these few but significant facts because they reflect motive in the bad faith I allege.)

C) Among other components, the Civil Rights Division (CRD), about which I have a separate section below, conducted a whitewashing investigation of the FBI. It had not complied with the Item of my requests seeking the materials of all defendant's reinvestigations. (My counsel obtained some of the records of the reinvestigation by the Office of Professional Responsibility (OPR) by filing a separate suit when I was ill.) While belatedly I received a redacted copy of the CRD's report on its so-called reinvestigation, which has almost no reference to the crime and the FBI's investigation of it at all, the alleged backstopping of the final report still is not provided.

D) I have not received the pertinent records of defendant's Community Relations Service (CRS). It withholds the report filed by its representative who was with Dr. King when he was assassinated. I have provided

entirely uncontradicted proof that, although the black community believed CRS was supposed to safeguard its interests, in fact CRS was an agency of defendant's espionage within the black community.

39. These are only a few of the many embarrassing facts defendant had to hi hide, as the Court perceived and indicated.

40. AUSA Dugan was not finished with his claims to mootness and his efforts to obtain untimely summary judgment. On November 2, 1977, he told the Court, "As far as I am concerned the case is closed. I wish it was a unanimous decision." He then added what defendant proved to be untruthful when Mr. Quinlan J. Shea, Jr., was produced as an expert witness, that "we have checked and determined that ... with respect to plaintiff's contentions that there were unnecessary deletions, they have been reviewed by the Department of Justice since June 1st under the new criteria and the deletions that were made were sustained on appeal." Mr. Shea testified to the exact opposite. He also stated the opposite in several reports he filed. He also stated that the FBI had lied to the Court and to me and that it had many pertinent records it had not even looked for. (He stated this in a memorandum the entire text of which was withheld from me under phony claim to exemption. It was later provided to another litigant and I have provided the Court with a copy.)

41. These persisting and knowingly unjustified claims to entitlement to summary judgment were repeated over and over again by successor defendant's counsel. While repeating them like a broken record, defendant was simultaneously disgorging additional pertinent records that were withheld until as late as this year. While I cannot provide an exact page count, I am confident in excess of 10,000 pages were provided after the last of the MURKIN FBIHQ and field office records were provided. I deal with some of these below under other headings. I believe it is apparent that all such claims by defendant were made in deliberate bad faith. Additional specifications appear below.

SUBSTITUTION OF THE MURKIN FILE FOR SEARCHES IS DELIBERATE BAD FAITH THAT ASSURED NONCOMPLIANCE

42. There has never been a search to comply with the specific items of my December 23, 1975, request. This is defendant's usual practice with me. In fact, without so intending, the FBI SA supervisor assigned to this case, John Phillips, recently attested to how defendant pulls this off in a declaration he filed in

My C. A. 78-0322 (with which C.A. 78-0420 is combined). In that case Phillips attested that, rather than making a search in Dallas and New Orleans, the then head of the FBI's FOIPA unit, SA.Thomas Bresson, decided what would be provided. As a result, after four years of litigation in that lingering case, the required searches still remain unmade and as I identify pertinent records not provided, defendant engages in further stonewalling in order not to disclose them. In this case the same decision also was made at FBIHQ and, instead of making the required searches, a large untruth was foisted off on the Court and me. This untruth is that all records pertinent to my requests are filed in what FBIHQ calls its MURKIN file, 44-38861. Before the first records were provided from that file, I informed the Court that defendant's representations were impossible and that providing the entire MURKIN file would not provide the information sought by my requests. Before the first calendar call in this case, I wrote the Deputy Attorney General and told him I did not accept his rewriting of my April 15 request. I never received an answer and the plain and simple truth is that good-faith searches were never made to respond to that request.

43. Examples of the foregoing are Items 11 and 14. Item 11 requests all information pertaining to any form of surveillance on 23 named persons. Item 14 requests all correspondence of 12 named persons. This information would not be in the MURKIN file, which is for information pertaining to the assassination, not these persons. Some of the information sought predates the assassination and thus it predates the assassination file. In fact, outside this litigation and by defendant's inadvertence in this litigation, I obtained and gave the Court proof of the existence of such pertinent information that was not searched for and still remains withheld. I provide below an example relating to a surveillance that was lied about by the FBI in its self-serving and pretendedly angry internal communications. I use this example because defendant has never responded to the proofs I provided. Disclosing what is withheld will be embarrassing so defendant stonewalls. It is because real searches would disclose what is embarrassing in this major case that the MURKIN substitution was seized upon by defendant. From the very first I refused to accept this substitution.

44. Of the many available illustrations I use that of the May 24, 1978, calendar call when defendant was on the one hand claiming complete compliance and

on the other alleging falsely that there would be no further compliance with my consultancy report was received. (After which it, too, was entirely ignored.) Beckwith then was the supervisor assigned to this case. He made a number of statements that did not conform with truth, after which my counsel stated, "Mr. Beckwith has spoken only about MURKIN files. The request does not specify MURKIN files, it specifies categories of information and the FBI's filing procedures mean that there is information relevant to the request which is contained in files which are not part of what they call MURKIN files." (Page 17) Yet more than a year later, on December 20, 1979, he was still telling the Court, "What we are concerned about is that a proper search was not made and from the very beginning this was the case." (Page 19)

45. Unaccepted and unacceptable substitution of the MURKIN file for my requests also was used to avoid such necessary searches as of the "see" references. My counsel informed the Court of our having notified defendant of searches required to be made without obtaining compliance. Instead, as he stated, defendant engaged in the knowing false pretense that if a record did not have a MURKIN identification "it did not pertain to the request." (Page 21) Months ago, he told the Court, on February 26, 1980, we served defendant's representative with a subpoena calling for him to "bring to the next status call all of the search slips with respect to the December 23, 1975 request ... He has not produced anything." Also, "There has been no statement that the FBI made a search of 'see' references, and it is apparent that there has been" none. (Pages 17-18) Yet on December 20, 1979, the Court had stated, "I am sure they have 'see' references," and my counsel replied, "they have not searched those." (page 24) As with all other specifications of failures to make a proper search and the impossibility of complying with MURKIN records only, defendant was mute.

46. Defendant knew very well that restricting response to the MURKIN file guaranteed noncompliance and might guarantee that I would take this case to the appeals court on that issue. Defendant also knew that limitation of response to the MUTKIN file deliberately violated the standards for searches laid down by the appeals court in another of my cases. However, as I state above, defendant was anxious to waste all the time possible, to inflate costs unnecessarily to be able to plead burdensomeness of the Act while simultaneously "stopping" me and my ri

writing. Restriction of compliance to the MURKIN file was deliberate bad faith, for ulterior and improper purposes.

OTHER STONEWALLING

1 47. The trickery of limiting compliance with my December 23, 1975, request to the MURKIN file,-initially that of FBIHQ only when the FBI knew it had 59 other MURKIN files - is an overall stonewalling but far from the only stonewalling. For example, as of today defendant knowingly and deliberately withholds information pertinent to my April 15, 1975, request, even after I asked for it repeatedly, including during the deposition of SA Kilty, when he was represented by defendant's present counsel. In his customary stonewalling he actually demanded that I file a new request for this clearly pertinent information. (Another example appears below under Abstracts.)

48. Kilty testified to the existance of NAA printouts, which are sought in Item 2 of this earlier request. As of today they remain withheld.

49. There was never any search for photographs or sketches of any other suspects. It took years after the FBI promised to return one such set that I loaned it. It stonewalled after the Civil Division asked it to do this and it stonewalled after it was promised in chambers on November 21, 1977. Only years later, on direct order of the Court, those items and some of the pertinent records were provided. As stated above, there never was any search to comply with Item 6, for crime-scene photographs and a falsely sworn attestation that none exist was provided by SA Wiseman. Item 7 of that request also remains unsearched and without compliance. But defendant's major stonewalling was reserved for my December 23, 1975, request. As a result, the Items of that request remain unsearched.

50. Although defendant claims there is no discrimination against me, the case record reflects that my two 1969 requests for King assassination information were ordered to be ignored at the highest FBI levels and were ignored; and that about 25 of my other information requests, going back to January 1, 1968, also were ignored. The inquiry into this requested by the Court ignored those 25 other requests and misrepresented the actuality with regard to the 1969 King assassination requests. I state in my August 15, 1982, affidavit that, despite defendant's promise to the Congress to act on those 25 requests, it has failed to do so. With

regard to these earliest King assassination requests, instead of being honest with the Court and stating the truth, that the Director himself approved deliberate noncompliance, defendant stated merely that they were not complied with.

51. On its own the Court perceived stonewalling of my requests at the July 1, 1976, calendar call. When defendant's counsel claimed that my requests were being handled in proper order, first-in-first-out, the Court twice stated, "I do not believe it." The Court added, "I have had other cases that are later than this that have" been complied with.

52. On September 8, 1976, defendant produced SA Donald Smith as the first of several expert witnesses on FOIA matters. He testified (Page 21) that the FBI "follows the procedure of first-in-first-out." But he could not explain how under this procedure the FBI had not complied with my many ignored requests. He could not explain how my request for records pertaining to me had not been reached when under his representation of the claimed backlog it should have been. (Page 22) He likewise could not explain how with the claimed backlog my appeal in this case had not been reached. (Page 28) He also testified that he was aware that the Court had ordered that the names of FBI SAs not be withheld (Page 31), although they had been and thereafter continued to be throughout the processing of the entire FBIHQ MURKIN file.

53. On September 16, 1976, defendant presented Unit Chief John Howard as an FOIA expert. Although he sought to testify that my requests were being processed in order of receipt, he could not explain how they had not been reached when they were overdue according to the letter Director Kelley had written me (Pages 55-56) or how other requests, older than the backlog, had not been reached. He was questioned about an affidavit he had filed in another case. In it he testified to a repeated page-by-page reviews of files pertaining to the assassination of President Kennedy but he could not explain how with "the search already (having) been conducted ... Mr. Weisberg ... does not have the documents." When defendant's counsel objected, the Court stated that my counsel was "attempting to show ... that this plaintiff is not treated the same as any other requester of documents, but he has been somewhat hampered in receiving the items, even those that are already available." (Pages 59-60)

54. This was confirmed in the testimony of defendant's next FOIA expert,

Unit Chief John Cunningham. When he was questioned by the Court (on Page 94), he acknowledged that some King records had been processed, but I did not receive copies.

55. When defendant's counsel said that they want to "follow the dictates of Open America," the Court noted that neither of the FBI witnesses "is saying that he is going to do it that way ... and it isn't, apparently, going to be in the chronological order of the request... if you are going to say first-in-first-out, then let it be first-in-first-out." (Page 101)

56. The standards of Open America were the subject of an exchange between defendant's counsel and the Court the next calendar call when he stated that I had testified to "urgent need." The Court went back to his reference to Open America and stated that "under Open America" he "has extraordinary reasons for needing this" and also "that the time which the Government has indicated these things will be taken care of does not contemplate, apparently, that some of them" were requested at an even earlier date. (Page 219)

57. That was in 1976. Defendant did not even attempt to rebut my urgent-need testimony, even though defendant had raised Open America and had claimed to to want this case to proceed under its standards, particularly its first-in-first-out requirement. Instead, it just stonewalled and, still without making and attesting to the required searches, was still disgorging pertinent and withheld records in 1982 when I sought to end this case defendant's bad faith had prolonged for so many years.

58. The Court ended the calendar call of October 8, 1976, with another reference to defendant's stonewalling: "I might say, insofar as the Court has seen, it does not believe that it (my request) has been complied with." The Court did not attributed this to counsel "but I am attributing it to the FBI's desire not to make the disclosure to this plaintiff that is required." (Page 37)

59. The transcript of the calendar call of June 30, 1977, reflects the stonewalling of my fee-waiver request. Defendant had postponed decision until after the case was over. (This also meant I would have to continue to pay the FBI for all the many irrelevant and worthless MURKIN records I did not ask for and did not want.) The Court stated, "I don't think he would give that response to someone other than Mr. Weisberg, and I don't believe - - I mean the file has shown this bias

within the Department that has existed for years. I thnk that once having seen that we can't very well impute good intentions." (Page 24) The Court added (on Page 26) that "in any event, we do know that his requests have been in for years" without compliance.

60. The stonewalling never ended. Periodically defendant made serious misrepresentations about it. Supervisor Beckwith told the Court on May 24, 1978, that the FBI had "agreed to look at them if he could tell us what his particular problem was and that has been our difficulty with him." (Page 16) A bigger lie is hard to imagine. Later Mr. Cole complained about the great volume of precisely this information that I did provide. The truth is that long before that date I had, in person and by many letters that never received any response, done exactly what SA Beckwith pretended I had not done. In no case had the FBI written me to claim that it could not understand anything I had written it. It never made any such claim in any of our many meetings. By the time of this gross and deliberate Beckwith lie, I had also provided the summary list prepared by an American University undergraduate, as stated in my prior affidavits.

61. As late as the December 20, 1979, calendar call the Court stated, in response to one of my counsel's many protests that the proper searches still had not been made, "I am sure they have 'see' references." My counsel stated "they have not searched" the "see" references. (Page 24) The "see" references still have not been searched. As stated earlier, defendant also did not comply with the subpoena for the production of search slips to the Court.

<u>SA Beckwith's False Swearing and Presentation of Phony Documents</u>

62. SA Beckwith was not content with mere verbal lies, of which one example is in the second Paragraph above. He swore falsely and he presented phony documents as authentic when the Court required defendant to address the list of improper withholdings prepared by the undergraduate. As I stated in earlier affidavits, defendant mailed his affidavit to me under conditions that ordinarily would have prevented my receipt of it before the August 14, 1978, calendar call but, by happenstance, I did get it. Ms. Ginsberg referred to it as definitive that day. My counsel stated (at the bottom of Page 5), "we find that it's highly misleading and dishonest." He returned to this at the next calendar call, of September 24,

1978. He told the Court that, in addition to a shorter affidavit of August 13, 1978, I had provided a 70-page analysis of the Beckwith affidavit. He then stated a painful truth, of "the difficulty that we have and the time-consuming nature of having to respond to misrepresentations in Government affidavits." He used as an example my letter to the FBI complaining that "all of serial 4914 was withheld, no exemption was claimed." I had also stated that what had been written on the worksheet under its "remarks" heading "had been erased." In response Beckwith swore "that in regard to plaintiff's statement that something had been erased from the remarks column, the master copy of the inventory worksheets for section 96, serial 4919 shows that nothing was ever written in or erased from this column." My counsel then gave the Court a copy of SA Beckwith's worksheet, described it and attached it as Exhibit Z to his affidavit, along with the copy provided to me with the records. My counsel stated that, with regard to Beckwith's version, "it's quite clear that nothing is written in there and nothing erased. So it would seem that Mr. Beckwith's affidavit is correct. However," he stated, referring to the actual copy provided to me by the FBI, "the handwriting on these sheets is entirely diffeeent, and out to the right" on the copy provided to me "something in fact had been written in and has been erased."

62. He next used as another example of Beckwith's false swearing (on Page 6), his response to my complaint that what was withheld from serial 4849 had already been disclosed. Beckwith swore "that deletions were made ... to protect an informal (informant) symbol and number that would identify the informant. The release of this information," according to Beckwith, would result in virtually unimaginable disaster to the FBI's law enforcement responsibilities. My letter to the FBI correctly identified that informer, Willie Somersett, who then also was quite safely dead. Without any checking at all, Beckwith had to know that theee was no secret to protect. To demonstrate the magnitude of the FBI's prior discloaure of what Beckwith swore hdd to be withheld from me, I provided my counsel with two large volumes of many the FBI disclosed to a writer friend whom I had helped with his FOIA request and his writing about Somersett.

63. In response Ms. Ginsberg was not at all repentant about having presented to the Court what can be regarded as perjury and fakery. She said of what had just been disclosed about Betkwith that "there is not one shred of evidence to suggest

that Agent Beckwith has done anything but his job in the very best manner." (Pages 889) Ms. Ginsberg thus represented that deliberate falsehood under oath and fakery by an FBI agent is doing "his job in the very best manner." The Court felt otherwise and felt that such affidavits are "obstructionist." The Court added, "I would hope that we never hear from Mr. Beckwith in this case again." (Page 9)

64. Beckwith's affidavit is very material. It had been defendant's persistent false representation that I had not provided specifics pertaining to improper withholdings, including excisions, as Beckwith stated falsely to the Court (quoted in Paragraph 60 above). Department counsel repeatedly indulged in the same untruth, as specified in my earlier affidavits. When Ms. Ginsberg had told the Court, again untruthfully, that I had not provided anything the defendant could check out, my counsel informed the Court of the student's summary listing of such specifications in my letters to the FBI. As reflected in greater detail in my August 16, 1982, affidavit, the Court then ordered defendant to respond. This Beckwith false swearing is that response and thus has that materiality. In fact, Beckwith's affidavit is distortions, misrepresentations and lies from beginning to end, as my affidavit and 70-page memorandum on it reflect.

65. Whether or not this is a much more serious matter, as I believe it is, it is this defendant's stonewalling method in all my cases. One of the many consequences is that after up to six years defendant has yet to respond to my many specifications of improper processing about which affiants like Beckwith and defendant's counsel have spoken only untruthfully to the Court.

<u>Withholding by Unjustified Claims to Exemption, Without Claim to Exemption and by Meaningless Claims to Exemption</u>

66. Most of what Beckwith was to address is my specification of improper claims to exemption, of which the cited Somersett case is an example used by my counsel. The other illustration he used is withholding without <u>any</u> claim to exemption. As I also state above, this was the FBI's practice with what little was provided in response to my April 15, 1975, request, even though the Court told defendant that practice was wrong. But, as defendant ignored all my specifications, in many letters and in personal conferences, so also did defendant ignore the many detailed and documented illustrations in my many affidavits. My affidavits relate

largely to defendant's false representations and to improper withholdings. (According to a list of them recently prepared by my counsel, I filed 27 affidavits that are virtually entirely ignored.)

67. Virtually all that my counsel and I provided in open court pertaining to improper claims to exemption and to the absence of claims to exemption also remains ignored. Defendant's counsel merely repeated the same untruths about these matters even though they had been corrected many times. This stonewalling was so successful that the widespread improper processing remains unrectified. Even when defendant's own expert witness, Mr. Shea, testified on January 12, 1979, that the disclosed records required reprocessing, this was never done.

68. Mr. Shea then testified that the widespread use of (b)(2) in this case was inappropriate but the claims to (b)(2) persist. For the most part, this claim was asserted after the Court ruled that it might not be used to withhold the names of FBI personnel. At the June 10, 1976, calendar call (Page 17), which was several months before the processing of any of the MURKIN records, the Court stated, "I will say, and rule at this time, that an official working on official duty is not subject to the Privacy Act as suc, and, therefore, their names should be given." The Court also stated, "If the Government contests that, indeed, we will need some briefs." Defendant merely ignored the Court. No briefs were filed and throughout the approximately 44,000 pages of the FBIHQ MURKIN file all such names were withheld, with the privacy claim added. Later, when SA Martin Wood was supervisor, he provided an affidavit to serve as a Vaughn sampling. He then swore that the FBI abandoned this practice right after those records were processed. Those names were never restored. His swearing also was false because thereafter, particularly in C.A. 78-0322, FBI names were withheld. Those records were processed for me after the end of the processing of the MURKIN records and before Wood executed his affidavit. Fearing no hobgoblin of consistency, Wood also withheld SA names in his sampling.

69. The Court to no avail reminded defendant that both the Attorney General and his Deputy had attributed special importance to King assassination records. "These are cases of national importance," the Court stated, "and they also, I think, reflect in their present posture adversely on the FBI, and the longer they take to bring it (the information) out, the worse they are going to look." With regard to "picky" claims to exemption, the Court stated, "I am concerned with getting the

information out, clearing the air as fast as possible, rather than having a situation that is something else." (Page 20)

70. When SA Smith was cross-examined on September 8, 1976, he testified that he was aware that the Court had ordered that FBI names not be withheld. He was asked about the FBI's practice with regard to withholding FBI names. He testified, "Sometimes we do. Sometimes we don't." He testified that they were then processing releases in which they did not withhold FBI names. But in a case like this SA Cunningham testified on September 16, 1976 (Page 23), "in a case of national renown ... we leave them in." He added that the names were known in any event.

71. Right after this testimony the FBI did the opposite and withheld all such names from the FBIHQ MURKIN records.

72. Throughout this long case my counsel and I reported the improper and meaningless making of claims to exemption directly to defendant and frequently in court. Despite all our many specifications of this, defendant's stonewalling was so successful that for most of the records disclosed in this case there is no identifiable claim to exemption.

73. Throughout all 44,000 pages of the FBIHQ MURKIN file, claims to exemption are posted on the worksheets only. The worksheets are by document, not by page. When I asked the FBI to post them on the documents, it refused. As a result there are multiple claims to exemption for entire documents and there is no way of knowing what claim is meant to apply to what withholdings. Most of the records are of more than one page and some are of more than 100 pages. With regard to individual pages, whether the document is of but one page or for any one page within a longer record, it is never possible to know what claim to exemption is made for any withholding where more than one claim is made, and this means in virtually 100 percent of the cases. Although the Court told defendant this might not be done, defendant persisted and never corrected this knowingly improper and wrongful processing. As a result of this particular stonewalling - and my appeals also are without response - it is not possible for the Court, for me or for other Americans, now or in the future, to know what claims to exemption defendant made to withhold so vast an amount of information from these records pertaining to this matter of such "great importance" in our history, this historical case in which claims to exemption were to have been minimized, on the Attorney General's promise.

74. Throughout the many calendar calls we drew defendant's attention to this and many other similar matters, only to have them remain entirely ignored. For example, three years later, at the December 20, 1979, calendar call, present defendant's counsel repeated the canard that the worksheets disclose what exemptions were claimed. (Page 12) My counsel again pointed out that this is not true. He cited a single record for which multiple claims to exemption for all 123 pages were made on the worksheet. He stated, correctly, that "you don't know which page relates to which exemption." Or where more than one claim may be asserted per page, to which withholding any claim pertains. This was resumed later that same day when my counsel told the Court and defendant's counsel, "The truth of the matter is that virtually all of the MURKIN Headquarters documents contain multiple claims of exemption for the same document." (Page 32) Defendant's counsel therefore knew the truth.

75. When this matter came up again at the February 26, 1980, calendar call and despite having already been corrected about it in open court, present defendant's counsel repeated this untruth, "Each document that the FBI has produced has the names (sic) of the exemptions that are claimed." When the Court pressed him on this and asked about documents that ""have a hundred pages and they give three exemptions for the things without knowing which is claimed for what pages," he admitted, "That is a possibility." The Court stated, "That is not good enough, counsel." Nonetheless, defendant persisted in stonewalling, did not make any rectification, and it still is not possible for anyone to know what claim is made for what exemption in most of those 44,000 FBIHQ MURKIN pages.

76. In direct contradiction of SA Beckwith's and many other of defendant's untruthful representations pertaining to claims to exemption and the false pretense that I did not provide specifications is the letter of August 20, 1977, from Inspector McCreight. My counsel read it in court, so defendant's counsel was well aware of it if by no other means, by that means. The then FBI FOIPA head wrote that, "Upon completion of the processing of the MURKIN file we will go back and review Mr. Weisberg's complaints about exemptions." Contrary to the many bad-faith representations by defendant, Inspector McCreight does reflect receipt of my written specifications. He does not claim they are in any way inadequate or incomprehensible. That fiction is defendant's later fabrication. It was fabricated to avoid

what defendant cannot address, the extensiveness of improper withholdings, including in but not limited to the claims to exemption.

77. The number of straight-out untruths defendant presented to the Court pertaining to specific claims to exemptions about which I had complained is large. Some of those reflected in the transcripts include overt false swearing.

78. During the September 16, 1976, cross-examination of SA Cunningham, my counsel raised the FBI's extensive withholding of the public domain in response to my April 15, 1975, request. The matters about which he questioned SA Cunningham were not new to the FBI because, in addition to the other means by which I called it to defendant's attention, I did it, specifically, in conference with SA Wiseman and FBI house counsel, SA Parle Blake. Some of these are the name of Aeromarine Supply, the Birmingham company from which James Earl Ray purchased the rifle the FBI calls the death rifle, and of its employees who had knowledge of that purchase.

79. All of those names are in the books on the subject defendant claimed the FBI's FOIA processors studied. They are in countless newspaper and magazine articles in the FBI's MURKIN file. When all those persons were subpoenaed as witnesses for the expected trial, that was reported in the press. In addition, their expected testimony was narrated in open court by the prosecutor. This resulted in further widespread publicity. Yet all those names were withheld. When I asked SA Wiseman to have them restored, he refused. (He also refused to abide by the Court's ruling relating to FBI names.)

80. SA Cunningham testified he did not defend those excisions. He then stated that when defendant got into "the Martin Luther King investigation, we would opt towards maximum disclosure, and, obviously, to the extent that anything by virtue of reading the file is in the public domain, it will be released in its entirety." (Page 227) His statement is untrue as well as evasive, in general and in this specific case. It is not true that the FBI later disclosed what its own records reveal is public domain. What is true of the Aeromarine names is also true of many others. Their names are public domain in the FBI's files copies of newspaper and magazine articles, books and court records but are withheld.

81. Cunningham's intended evasiveness is reflected in his redefinition of the public domain to limit it to what is reflected in the FBIHQ MURKIN file and then, to limit it further, the interpretation of those who read the MURKIN file. While even

his prescribed commitment was not kept, he and the FBI knew very well that other records are pertinent and had to be searched if the FBI did not intend to withhold the public domain. The FBI was well aware of the extensive newspaper and magazine articlés and the books on the subject. Cunningham's evasive promise reflects defendant's early determination to avoid the "see" references as well as what I provided.

82. One of the countless examples of this is the aforementioned informer Willie Somersett. I informed the FBI that he was dead and in any event had disclosed himself in his own publicity seeking. He disclosed himself to the press in Miami; by going to New Orleans to be interviewed by the District Attorney, after which he had himself interviewed by the press; and by adding great and sensational detail in a paper he published. All of this is the FBI's files, in MURKIN or in the Somersett files withheld from me but given to another requester. It remains withheld even after defendant was embarrassed by what I displayed to the Court, as stated above.

83. Cunningham's promise on behalf of defendant, like so much in my personal experiences with this defendant, is Orwellian. Even if defendant had disclosed what the MURKIN file reflects in public domain - and the opposite is true - by limitation of what would be disclosed to this, he was not opting "towards maximum disclosure." His guarantee is rather of minimum disclosure.

84. Defendant's dishonest intent is reflected by practice after this testimony and in my counsel's questioning of Cunningham. He asked if these names "were publicly known, then you would disclose them?" This is unequivocal, without Cunningham's artificial limitation to disclosure in the MURKIN file only. Cunningham's unqualified response was, "Absolutely." He added, "That is our policy." He testified untruthfully in all particulars. I provided a large number of proofs of the withholding of the public domain in my many affidavits and letters to and conferences with the FBI, at the two November 1977 Civil Division meetings, and in my consultancy report. Yet with only a single exception was any of these multitudinous withholdings of the public domain corrected. I embarrassed the FBI by presenting to the Court a newspaper clipping from the MURKIN file in which the name of SA George Bonebrake was withheld 10 times. (He was a fingerprint expert and a professional witness.) Not only was the clipping proof of the fact that Bonebrake's name was public domain - the MURKIN

file reflects that he was defendant's only live witness at the Ray extradition heading in London and that this, as would be expected, received enormous worldwide publicity. Defendant later provided an unexcised copy of the newspaper story - which had to do with citing Bonebrade for contempt of court!

85. Moreover, in C.A. 718-70, which is reported in the FBIHQ MURKIN file, I sued for and by summary judgment did obtain some of the information used to procure the Ray extradition. What then was disclosed includes a Bonebrake affidavit. And after I had to sue to get public records, as the record in this case reflects, in order to hurt me defendant decided to and did make widespread distribution of what I obtained. So, by all these and many other means, those who withheld the Bonebrake name from an embarrassing newspaper story knew very well that they were withholding the public domain - as well as violating the Court's Order of June 10, 1976.

86. If these entirely unjustifiable withholdings were not a fair representation of FBI FOIA policy and practice in this case, they would be merely ludicrous. Because they are a fair representation, they underscore defendant's bad faith in this entire matter.

87. I made defendant and defendant's counsel aware of these matters and countless others like them. I did this in person, in many letters, and in a very large number of appeals after the Court requested defendant to put Mr. Shea in charge. (It refused, but I continued in the cooperation requested by the Court.) It therefore is more than merely untruthful for defendant's counsel to misrepresent and pretend the very opposite to this Court. One example is Ms. Ginsberg's false representation to the Court on June 26, 1978, pertaining to "specific deletions" and defendant's allegedly unrequited longings for my specification of them. She told the Court that "we were hoping that we could get, informally, from plaintiff -- their problems were (with?) specific deletions and that we could sit down and talk about them." (Page 6) I was always exact in taking up "specific deletions" with defendant, including the FBI. All of defendant's components, including the Civil Division, almost without exception, ignored all of them. Insofar as sitting down with them, Ms. Ginsberg never extended any invitation and she, personally, refused to go to Mr. Shea's office and do this with my counsel and me after the calendar call at which the Court requested that he be put in charge. She did walk back to the

entrance of the Department's main building with us, but she refused to go to Mr. Shea's office. I personally asked her to and one of the matters I wanted very much to get worked out was the simply enormous amount of entirely improper and unnecessary "specific deletions."

88. In this context I note that it is Ms. Ginsberg who presented Mr. Shea as defendant's expert witness on January 12, 1979. She led the Court to believe that he was endorsing the FBI's processing of these records. In fact, as soon as he was questioned by my counsel, he testified as an "honest man" that these "specific deletions" had to be restored. (The defendant never did that.) Moreover, as of the time of Ms. Ginsberg's entirely dishonest statement to the Court, I had spent a great deal of time and effort with the FBI in a number of meetings in which I took up many "specific deletions." I gave the FBI copies of its disclosed records and of proofs of the unjustifiable character of these "specific deletions."

89. Also on June 26, 1979, Ms. Ginsberg stated that "we have never gotten this kind of systematic listing of problems from plaintiff." This no doubt was inspired by the lengths to which I had gone to provide exactly that and did it as the records were disclosed. Another inspiration may have been the 12-page summary listing of them prepared at defendant's request by the undergraduate.

90. Further underscoring the bad faith of these untruths is my counsel's response (beginning on Page 7), with specific illustrations. He concluded by reporting that I had completed my consultancy report. He described it as "massive and overwhelming."

91. Nonetheless, Ms. Ginsberg continued with additional bad faith, stating the opposite of the truth: "The documents (disclosed to me) have been processed in accordance with the latest guidelines of the Attorney General on (b)(7)(C) and (b)(7)(D) and (b)(2)." (Page 9) It is precisely these withholdings that her own witness, Mr. Shea, testified had to be restored because they were not in accord with those guidelines. With regard to (b)(2), he testified that their use of it was inappropriate. (This did not discourage its continued use by the FBI.)

92. She added, in what may well be the largest misstatement of its kind and is the largest misstatement of its kind of which I know in any FOIA matters, "But if the plaintiff wants something from the Government, they have to give us the information on which to base some sort of response to them."

93. Underscoring the magnitude of Ms. Ginsberg's untruth is the complaint of her successor, William Cole. Intending it as a complaint rather than commentary on his predecessor's untruthfulness, he stated on February 8, 1980, "Apparently there is a limitless number of problems that have been brought up in letters." (Page 32) He added the very opposite of what Ms. Ginsberg said, "We cannot answer everything that has ever been raised in the letters, thousands of pages of letters that are involved in this case." (Page 32-A) ("Thousands" is an exaggeration.)

94. This, too, underscores bad faith. One defendant's counsel complains that I have not informed defendant and another defendant's counsel complains that I have overinformed defendant.

95. As to whether defendant could respond, defendant was required to respond by defendant's own Stipulation. Moreover, the FBI promised in writing that it would respond before the Stipulation was entered into.

96. It is apparent that at least one of defendant's counsel was untruthful because each states the opposite of the other. In fact, both were untruthful, each tailoring the untruth for an ulterior and improper purpose.

97. Ms. Ginsberg had SA Beckwith with her. He paraphrased her untruths. He stated that "the people that processed this material read a lot of the public (sic) books. Mr. Harp, who did it, I think is well educated in the case." (Page 12) I repeatedly took up with those people, including Harp, the fact that they were withholding what was published in those books and they continued to withhold what was published. They even refused to accept a consolidated index to all the books and the index of the transcripts of the two weeks of evidentiary hearing so they could continue to withhold through real or feigned ignorance. The FBI was so pleased with Ralph Harp's performance, which includes extensive withholding of the public domain, that it promoted him to special agent. Mr. Harp and his associates even managed to withhold an entry in a published telephone book and to continue to withhold it after I provided a copy of the phone book.

98. SA Beckwith added that "if the plaintiff could help us there and point to something, then we could consider it again." He states the opposite of the truth because as he very well knew I had done an enormous amount of what he pretended I had not done. When the Court required an FBI response to the summary listing of what I had written the FBI, what Beckwith did to "consider it again" included

perjury and the faking of records.

99. He added that what he pretends I had not done "was <u>for</u> the purpose of our agreement in the Stipulation." In fact, this is <u>not</u> the purpose of that Stipulation. But, although the Stipulation did require the FBI to respond to my written complaints, it has never done so.

100. When he got specific, Beckwith was no less specifically untruthful. With regard to the names of prisoners in the MURKIN records (Page 15), he stated, "Any time we had information that the individual had mentioned publicly that he either served with James Earl Ray, had in any way been involved in the case, we released that name." The opposite is the truth and the FBI persists to this day in withholding exactly what Beckwith told the Court defendant released. With regard to those prisoners, the FBI finally prepared a list and asked me which ones I was more interested in. I reduced them to a small number and in the five ensuing years have not heard a word about them. The truth is that the FBI withheld the very names publicized in the books SA Beckwith claimed had "educated" Harp and his associates. Even when I sent the FBI copies of its own disclosed newspaper clippings reflecting that these criminals had gone public on their own, the FBI did not discontinue such withholdings and did not correct improper withholdings made despite that FBI "education" of which Beckwith boasted. Yet Beckwith dared state the exact opposite, "we told the plaintiff that if, in fact, he's got some sort of information that a particular prisoner did go public, we would be glad to release his name." (Page 15)

101. SA Beckwith flaunted defendant's disregard for the order of this Court in the midst of additional untruth when the Court read a MURKIN record I had provided pertaining to 12 individuals used as James Earl Ray's guards. The Court stated (Page 16), "And every name has been deleted." He responded, "Yes, that is right. That would be no different than any other employee of the Federal Government." This is precisely what the Court ruled on June 10, 1976, <u>two years earlier</u>, could <u>not</u> be withheld, the name of a public employee performing public duties. However, <u>not one was a federal employee</u>. Moreover, all these names were published years earlier and were disclosed in the case of <u>Ray v. Rose</u>, as those processing these records knew because the FBI's records include it.

102. The Court asked, "Wasn't it a matter of public record who the guards were?" Beckwith replied, "No." (Page 16) When my counsel corrected him and pointed

out that all these names, of the only local police who were guards, were published and are in the record of that case, neither Beckwith nor anyone else speaking for defendant offered to reprocess those records.

103. For all the world as though I had not already gone to great effort to do it and had done it, Ms. Ginsberg told the Court, "What we need is exactly what Mr. Lesar began (sic) to tell us. If the names are deleted ... are on the public r ecord somewhere else, we need that information." (Page 18)

104. This is one of innumerable examples in the case record of defendant's willingness, through counsel, through counsel, through witnesses and in affidavits and pleadings, to state and swear to anything that at any moment appears to be expedient, without regard to fact and truth - and never to correct falsehood, error or inaccuracy. It taints everything and is so pervasive it is not possible for any plaintiff to catch up with and correct all of it; and if he makes any effort at all, he is required to go to great lengths, which makes him unpopular with overworked courts. If he does not make some effort, he risks the wasting of all his effort and becomes party to the deliberate deception of the courts resulting from this permeating bad-faith practice.

105. Ms. Ginsberg's trickery also is characteristic. She knew very well that I had done at great length what she pretended I had never done. She talked about it often enough, if never truthfully. Specifically, what she represented I had not done with regard to this particular record and the names of these guards, I had already done with the FBI and I amplified it in appeals that, also typically, remain ignored.

106. One of the more bizarre kinds of withholding, one about which SA Wood swore falsely, pertains to a Birmingham record that, under the Stipulation, should never have been withheld. After I complained, the FBI Director offered it to me in writing. I than again asked for it in writing, but the FBI continued to withhold it. On February 8, 1980, which is rather late for 1978 disclosures, my counsel responded to a question from the Court about this record by stating that "the Wood affidavit claims, in its fifth paragraph, that the Birmingham items were released. But his own worksheet, which is attached, shows that it was withheld. And yet they have failed to substantiate any basis for withholding it."

107. I had provided an affidavit in response to Wood's. In it I showed

that he was untruthful. Defendant's counsel, not for the first time, was unapologetic about the sworn untruths he had presented to the Court. Instead, he complained that I had accused Wood of perjury and the Department of lying. Yet I do not recall that defendant has ever withdrawn any sworn or unsworn untruth. As I state above, when I proved that Beckwith had lied and provided a fake record under oath, instead of withdrawing his untruths and fakes and providing truths and actual records, or even claiming that he had not lied and used fakes, defendant's counsel asked that the proof of Beckwith's bad faith be expunged. With regard to the record about which Wood lied under oath, belatedly and without apology, it was provided. However, this was only after the Court ordered it. In a case where so many thousands of pages are involved, most of the bad-faith withholdings simply cannot take the Court's attention. Thus there remains an extraordinary amount of unjustified withholding, despite all of defendant's contrary representations.

Laboratory Files

108. Existing and pertinent Laboratory records remain withheld by defendant's standard devices of stonewalling and uninhibited untruth. Because counsel are willing to do and say anything that at any time appears to be expedient, they contradict themselves. On May 5, 1976, AUSA Dugan told the Court (Page 12), "Now if they ask for laboratory matters and photographs they go to the laboratory." Yet on December 20, 1979, knowing full well that it was untruthful, present defendant's counsel told the Court the exact opposite. My counsel had noted that there were lab files that remained unsearched. (Page 44) Defendant's present counsel told the Court the exact opposite of what AUSA Dugan said, "just to respond to this last, when we takk abott the lab files, every FBI agent has told him there are no lab files in existence now." Some months later, and contrary to his oddly-used and unexplained "now," present defendant's counsel represented the Lab SA Kilty in a deposition in my C.A. 75-226. At that time and under Mr. Cole's prompting, SA Kilty produced long-withheld records that weee <u>never</u> in Central Records files and <u>were</u> in those of the Laboratory. These had been withheld for a mere six years and for a year after the appeals court ordered them to be searched for an provided. Also contrary to Mr. Cole's quoted untruthful statement, he also represented Kilty in a deposition in this instant cause before he told this untruth. At that time Kilty

testified to the existence of Laboratory files. He testified to those he claimed he searched and he even acknowledged the existence of withheld information pertinent to Item 2 of my April 15, 1975, request. When NAA is performed, there are printouts. SA Kilty referred to those made in the King assassination investigation as "Polaroids," without further explanation. My counsel pointed out that these are responsive to that Item and I again asked for them. Instead of having them provided and taking a step toward the decent and honorable end to this long stonewalled case, Mr. Cole demanded instead that I file a new request for what I had requested more than six years earlier. Conspicuously, he ignored this when I stated it to the Court in earlier affidavits. And that information remains withheld.

109. In fact, Kilty testified to the locations of the file cabinets he searched in the Laboratory. He even testified to the existence of a special Laboratory file for the preservation of historically important information included within that Item of that request. But he produced none of it.

110. Mr. Cole's untruthful "now" can have been intended to serve a wrongful and ulterior purpose. It is the FBI's stock false pretense that all its records are in its Central Records. A Congressional study by GAO reported that only about 25 percent are. In this case I provided copies of Central Records' MURKIN records reflecting that other copies were routed to "Lab Files" as well as to named Lab personnel. There thus can be no possibility of doubt about the existence of "Lab Files" and of the knowing and deliberate untruthfulness of the FBI's contrary representations. In the face of this, counsel had to be untruthful or explain why, after four years, the Lab's files had not been searched even though for all that time defendant pressed for summary judgment on the basis of claimed compliance with my requests.

111. At the same point Mr. Cole added details to his untruth, "Everything has been incorporated in the main file in this case (i.c., MURKIN, or 44-38861). He doesn't believe it, as with so many of these other issues. We can say it until we are blue in the face, 'There aren't any files,' and we can't retrieve anything from it. If he doesn't believe it, there is nothing more we can do."

112. Mr. Cole certainly knows better and other than this. If any record is in MURKIN, the FBI not only can retrieve it - it has sworn over and over again that that it has provided me with that entire file. All of his quoted contrived indignation is untrue. The most obvious of the proofs that he knew he was not telling the truth is what is within his personal knowledge, Kilty's testimony that the

withheld NAA printouts or Polaroids exist. That counsel knew this is proof that he knew he was untruthful in stating, "there is nothing more we can do." It is obvious that "we" can provide these printouts or Polaroids. They without any doubt are within Item 2 of my April 15 request; without any doubt are part of the FBI's MURKIN investigation; and without any doubt he refused to have them provided and instead insisted that I file a new request for them.

113. If Mr. Cole claims that I am not correct in this - and if he does not want untruthfulness to keep him permanently "blue in the face" - he can provide copies of the worksheets reflecting these Polaroids or printouts were provided to me or, if he claims they were provided after the MURKIN file was processed, the covering letter with which they were sent to me.

114. Because of the Long tickler and the Oliver Patterson and other records, he also knows better than, "Everything has been incorporated in the main file," or MURKIN.

115. Mr. Cole also has had years in which to prove - in which, in fact, he was challenged to prove - that I was not correct in my allegations of noncompliance "with so many of these other issues." Conspicuously, when compliance is the issue, he never once proved I was other than correct and truthful and on the few occasions when the Court left him no choice but to try, I proved that he adduced false swearing. (One of many instances involving one of his boilerplaters of untruth, SA Wood, appears above.) When he had an opportunity to cross-examine on this, he waived cross-examination. He is long on slurs, inappropriate and untruthful speeches and feigned indignation, but he is remarkably short on kidney. He neither puts up nor shuts up. (¶68. See also ¶125ff)

Withheld Indexes

116. Among "so many of these other issues" about which defendant's counsel waxed so eloquent in his feigned indignation is Item 21 of my December 23, 1975, request, which seeks any indexes. Present defendant's counsel himself stated at the February 8, 1980, calendar call, "There is a MURKIN index." He has not provided it but he has provided evasive, incompetent and untruthful allegations about one in Memphis. He refers to it as a "MURKIN index," so certainly it is part of what was supposed to have been provided in their entirety, the Murkin records. [illegible] MURKIN records. On these two bases it should have been provided. It has not been.

117. There is a prosecutorial index, meaning of the information provided to the Shelby County, Tennessee, prosecutor. It is not "a MURKIN index." Its sole purpose was to let FBIHQ know what it had provided and, conversely, what it had not provided to the prosecutor.

118. Despite the specific Item of the request pertaining to any index, the defendant refused to provide the prosecutorial index until ordered to do so by the Court. Examination of it disclosed extensive unjustifiable withholdings, not uncommonly of what was public domain and of what defendant had already disclosed. The FBI agreed to reprocess it and on November 11, 1977, gave me some 3000 pages that were entirely without any wrapping. Examination of it disclosed even more withholding. At the May 24, 1978, calendar call, my counsel specified the need to reprocess it again. The Court asked Beckwith, "Can that be done?" He replied, "It can be done." (Page 13) It has not been done.

119. Beckwith was untruthful in what he volunteered to the Court, "When we redid the index cards for Mr. Weisberg we approached it from as liberal point of view as we could." Orwell would be proud of Beckwith!

120. Present defendant's counsel has personal knowledge of what follows because he represented SA John Hartingh at that deposition. I presented Hartingh with a "before" and "after" section of the prosecutorial index to reflect that after it was "redone," after the FBI "approached it from as liberal point of view as we could," half of what had been disclosed was then withheld. Hartingh also was given individual pages, before and after reprocessing with the FBI's touted "liberality." These reflect that what was not withheld before was withheld under that great liberality. The FBI agreed to explain it. To date it has neither explained it nor properly processed that prosecutorial index.

121. There is, as is the usual FBI practice in such cases, a special case index at the Office of Origin, Memphis. The FBI never acknowledged the existence of this index, although it also is a MURKIN record as well as being an Item of my request. Finally, I provided proof of its existence. Defendant then provided ten index cards from the Memphis general indices and a glaringly incompetent statement that did not even include a claim to a search. It was made by a person who also did not claim personal knowledge. The thrust of this stonewalling was that there had in fact been this special index but there was some kind of rumor that it had

been consolidated in the general indices. But there were these ten cards that are the complete representation of that index as it once existed. The FBI did not even bother to provide the cards pertaining to the proofs I had provided. Of course, I appealed immediately and vigorously. My appeal remains without even acknowledgment.

122. Instead, present defendant's counsel told the Court on December 20, 1979, with regard to this index, "we have provided them (i.e., the cards) all to the Court, to the plaintiff, and there has been no response." (Page 6)

123. Even for him, this is a pretty conspicuous untruth because my response is also in the case record. By this untruth he has succeeded in perpetuating the withholding of the most valuable record in the entire case, the massive index to records that are even more voluminous than the 44,000 pages of the FBIHQ counterpart of those Memphis records.

124. When this exceptionally amateurish claim that the valuable index to an ongoing case record had been destroyed for no good reason reached me, the Court was not in session and my counsel was out of the country. In order to waste no time, I filed an immediate and detailed appeal on February 21, 1979, and I then attached it as an exhibit to an affidavit I provided that is in the case record. Defendant's counsel appears to claim a license to ignore all except the untruths he provides for the case record. Ignoring my appeals is par for this defendant.

125. Even a Mongolian idiot could not believe that so enormous a file is indexed in a mere ten cards of which only three pertain to James Earl Ray, the subject of the vast investigation. One of the proofs of deliberate untruthfulness that I provided is copies of these three cards and of the first page of the earliest Memphis consolidated report, what the FBI calls "investigative reports." (The case agent assembles many existing records, usually FD302 reports, in one or more volumes, called an investigative report.) The first page of this very first of such records lists <u>ten different aliases attributed to James Earl Ray</u>. <u>They were indexed</u>. But only <u>three</u> Ray cards are in the general indices. This alone proves the deliberate untruth of the incompetent and untruthful claim that the major case index of this major ongoing investigation was consolidated into the Memphis general indices. This alone of the proofs of untruthfulness I provided indicates why defendant, who had withheld deliberately, was compelled to be additionally untruthful to this Court.

126. More than 300 witnesses were subpoenaed, yet those who conceived this

monstrous hoax did not provide cards on them. This is because the major case index was not consolidated and still exists.

127. Counsel have the obligation of being familiar with the case record and of uttering only truth to the Courts. Because I did make and promptly file my response, and because it is in the case record, this quoted statement to the Court by present defendant's counsel is a deliberate untruth by means of which his client continues to withhold a clearly pertinent and an invaluable record.

128. This untruth also was essential to defendant's counsel's pressing for summary judgment, as reflected at the previous calendar call. He then informed the Court what is blatantly untrue, "that we have complied with all of the requests of plaintiff." (Page 2) He could not ignore the Memphis MURKIN index because the Court had taken cognizance of it. (See also below under Searches.)

129. The destruction of any such record requires the approval of both FBIHQ and the National Archives, which would not grant it because of its great and historical importance. No record seeking or granting approval has been provided. And, in another case record and MURKIN record that disproves counsel's false claim that I was silent, the September 4, 1979, Memphis airtel to FBIHQ, Attention FOIPA Branch, the Memphis SAC stated specifically that "there is no such record." This was in response to FBIHQ's telephone inquiry of August 31, 1979, which followed my continued pressing for the production of this index.

130. At FBIHQ this matter was handled by SA Pron W. Brekke, in Room 6984. Contrary to the allegation that all MURKIN records are in Central Records only, the copy provided to me by Mr. Shea does not include any Central Records identification. Yet it is captioned "MURKIN."

Other Withheld Memphis Records

131. Defendant began this long case with the most false representations regarding field office files, particularly those of the Memphis "Office of Origin" records. As all FBI SAs know, the Office of Origin is the repository of the major records in all investigations. All the other field offices are auxiliaries. Information is funneled to FBIHQ by the Office of Origin. Not uncommonly what is provided to FBIHQ is in the form of a Letterhead Memorandum, or LHM. These are intended for possible distribution and therefore withhold what the FBI does not want to distribute. They also are condensed for other reasons. As every FBI SA also knows, it is common

practice not to send all information to FBIHQ. Only that which the field office believes FBIHQ wants is sent to it. For these and other well-known reasons there is considerable information at the Office of Origin that is not in FBIHQ files. Because the FBI wanted to withhold this information from me, defendant misrepresented to the Court. This bad faith was deliberate. It was a means of withholding nonexempt information.

132. It also is beyond reasonable doubt that defendant knew that all 59 field offices were involved in the MURKIN investigation and that all had pertinent information that, in many instances, was not duplicated at FBIHQ. Early in this case I began asking for the inventories I knew had been provided by these field offices. SA John Hartingh lied to me in response, claiming that they did not exist. It took four more years and an order fron the Court before they were provided. (By tricky FBI filing, with the single exception of the Chicago inventory, not one copy was where it belongs, in the MURKIN file. The disclosed Memphis MURKIN records also do not include its inventory.) They reflect that FBIHQ ordered the production of these inventories, knew it had them and that they are nonexempt. FBIHQ and its Records Management Division, which handles FOIPA matters, therefore knew that all 59 field offices had pertinent and nonexempt information.

133. Initially the FBI stated that the Memphis office had nothing not duplicated by FBIHQ records. Based in part on this falsehood, defendant began talking of summary judgment prior to and at the very first calendar call, when tthere had been no search at all of the Memphis records. I was able to force the promise of a Memphis search when it got through to SAs Wiseman and Blake that I could prove that there were at least the crime-scene photographs about which defendant had addressed the Court only with deliberate untruth. My sources were the best: those who provided these photographs. In addition, I knew that FBI photographs were essential for its making of an elaborate scale-model of the scene of the crime. Having already attested that there were no such photographs at FBIHQ, which was false swearing, FBIHQ had no choice but to order a search at Memphis. Meanwhile, these same functionaries drafted a letter which was mailed to me over the signature of the Director in which he promised that I would be provided with all Memphis information that could be of interest to me. (My requests certainly indicated my interests.) That never happened.

134. Instead, only untruthful representations were made to the Court. An early one by defendant's counsel was on March 26, 1976, after I had had a pointed conversaton with him about these photographs. He told the Court "that further investigation will take place in the Memphis field office, which is probably the only logical place where any of the files could be located." (Page 3) In itself, this is a large untruth and the FBI knew it. We asked him on May 5, 1976, if that search included "documents other than photographs" and he replied that Memphis had been requested "to supply anything that came within the request of April 15 and whether there are documents I'm not sure." (Page 3) Against the FBI knew better, whether or not it told counsel the truth. I then received no documents at all from the Memphis office. And even though my December 23, 1975, request was ignored in his response, it was included within the Director's letter promising disclosure of anything that could interest me. But, limiting myself to the April 15 request, it is clear that the claim to a search was a fraud and that Memphis records known to exist and to be ressponsive were deliberately withheld. When I finally obtained some of the Memphis MURKIN records, I found that there is a list to them. They are so voluminous that this list takes up a typed page. The Memphis MURKIN file holds 131 volumes of files and subfiles. Some, like those holding the Laboratory information sought in my April 15 request, were clearly responsive. They also were automatically identified in this list, without examination of the records themselves. There was no search, it was lied about or both, and the Court and I were deliberately deceived by deliberate untruth. And another fake record was manufactured at FBIHQ FOIA to cover this deliberate dishonesty.

135. As I explain below with regard to the Stipulation, I received the Memphis records without any covering inventory although Memphis sent one to FBIHQ. One of the cartons alone was too much for me to handle, as the FBI knew, and the uninventoried records in it were a jumble. I asked Hartingh for the inventory and he made one or had one made up. I attach it as Exhibit 1. That this list was concocted by FBIHQ FOIPA is established by the fact that, with regard to five of the 19 listed files and subfiles, five are claimed to have been "previously processed" in the FBIHQ MURKIN file.

136. Bearing on the deliberateness of the sworn-to lie that there were no photographs in Sub 1A, which is 11 volumes of "Photos/Attachments;" bearing on the

deliberateness of the sworn-to lie that there never were any other suspects. Sub E, "Miscellaneous Suspects," consists of 20 volumes!

137. My examination of this fake list disclosed that, in the alphabetical idenfidication of the subfiles, "H" is missing. That this is not accidental is disclosed by what I eventually received - worksheets for three volumes of Sub H, "LAB REPORTS TO OR FROM Bu." (Exhibit 2)

138. FBIHQ FOIPA's deliberate omission of Sub H is in accord with its continued withholding of pertinent Lab records and covers the sworn-to lies of compliance with Items 1, 2, 3 and 4 of my April 15, 1975, request without search in Memphis. Sub 1A was required to be searched for compliance with Items 5 and 6 of that request and Sub E was required to be searched for compliance with Item 5, wwhich pertains to other suspects.

139. These worksheets are not executed properly. They do not include, for example, any entry under the actual number of pages. If this had been filled in, I might have caught the FBI in other unaccounted-for withholdings. However, the serial numbers themselves reflect the great extent of this subfile. It holds 421 reports.

140. Memphis also never searched its "see" references. Neither did the other field offices. This also is bad faith and it guaranteed noncompliance.

141. Whether or not defendant's counsel was aware of any of this dishonesty and fakery, he started backtracking by new misrepresentations to the Court. He represented that my request was for photographs only. (Page 4) My counsel reminded him that the April 15 request included six other catetories of information. (More pertaining to failure to search for and the withholding of Memphis and other field office information appears below under Searches and the Stipulation.)

Untruths About the Abstracts

142. Of all the many possible examples of defendant's and defendant's counsel's stonewalling to withhold important, pertinent and nonexempt information and to weary the Court and me while escalating the costs and contriving phony statistics for use in seeking amending of the Act, I illustrate with the matter of the abstracts. In part, I chose this because it reflects clearly the willingness of defendant's counsel to say anything at all, regardless of truthfulness or

untruthfulness, if it appears to be expedient - and he was never truthful and he contradicted himself. He thus consumed a major part of a number of calendar calls before the Court finally ordered their production. All that time was entirely and deliberately wasted, except that it served defendant's ulterior purposes of "stopping" me for that much more time and so wearying everyone that defendant was able to get away with a major withholding, of half of the abstracts - the more important half, the originals, which are in chronological order.

143. I first learned that FBIHQ has an abstract of every record during the deposition of Mr. Shea's former assistant, Douglas Mitchell. Mr. Mitchell was represented by defendant's present counsel. If counsel had no prior knowledge of the existence and pertinence of these abstracts, he knew from his own client's testimony. I asked for these abstracts and the stonewalling began immediately. Without repeated untruthfulness, this stonewalling was not possible. I do not recall a single fully truthful representation relating to these abstracts by defendant's counsel at any of the calendar calls. Even when I produced the FBI's own official and published description of them, he was incapable of truth about them.

144. On December 20,11979, defendant's counsel claimed that the abstracts are outside the scope of the litigation. He said they are "not a part of the file of the King assassination," which is not true, but are "a way of retrieving certain written documents," which is true and which he thereafter completely abandoned because that is ad admission that they are within the requests. One truth did not daunt him, however, and he continued with untruth, "They are not searchable with any - - unless you, in effect, take them completely apart to find certain things." (Page 7) Finding and using the abstracts has nothing to do with any taking apart of anything. They are not only searchable, they were created for searches, his own forgotten word, they are for "retrieving," as any index is.

145. At this calendar call he twice referred to the abstracts as an "index" (Page 17) and "like an index." (Page 20)

146. On January 3, 1980, he told the Court it would be an unjust burden on the FBI to provide the abstracts without a separate request. (Page 26) He did not explain how any burden was reduced by the making of a separate request. At the least, a separate request required additional and unnecessary clerical and paperwork.

147. He then told the Court about the abstracts what is not true, that they are merely "certain filing aids that are kept, that are typed out by secretaries at the time they type any documents the FBI has, whether in a field office or here ... They are not an index, they are a filing aid and a secretarial record." (Page 5) Every single word of this representation is untrue and was designed to withhold the valuable record. It serves no other purpose, other than the omnipresent stonewalling. The sbstracts are not filing aids and they have nothing to do with the filing of the records. They are retrieval aids. They are not prepared by the secretaries and they do not exist in the field offices. The abstracts also have no connection with secretaries, who have no need for any such records.

148. Having just represented that the abstracts are "not an index," which he had already said they are, defendant's counsel first stated I must file a new request for them, then that he was "unable to find anything in ... the requests that would indicate he wanted this." (Page 6) The Court interrupted his improvisations to state, "I can't think that this is a separate thing from the original requests," which the Court stated includes "everything that had to do with the Martin Luther King assassination." He responded by first stating that my request was limited, then saying "it wasn't really limited," but there was "an understanding that there were only certain documents left to be provided and those were listed in the Stipulation." This is designedly and intentionally false. The Stipulation has no such content and specifically states its limited pupposes, which had nothing at all to do with the production of any FBIHQ records. The only think I waived in the Stipulation, conditional upon the FBI's compliance with all its terms, is a Vaughn v. Rosen indexing. (Pages 6-7)

149. As he rambled around in his improvisation, he told the Court, "We are not opposed to providing them to him," which no doubt is why he resisted this so vigorously, to which the judge replied, "Why don't you just provide them to him?" The reason he gave is "there is a card for every single document he has received (which is not true) and it will take about six to nine months of FBI work in order to do this." The latter is an enormous exaggeration.

140. As he continued to ramble, he told a revealing untruth, that providing the abstracts would require "every original document ... to be reviewed again." (Page 9) There is only one condition under which this could be true: defendant's

knowledge that the processing of the underlying records was so terribly bad that what was withheld in them would not be withheld from the abstracts and I would thus be able to prove again the need to reprocess them.

151. By this time defendant's counsel had already sought to dismiss the abstracts in this case as no more than a mere index. When my counsel reminded him that my Item 21 requests any indexes or tables of content (Page 27), he reversed himself 100 percent and stated, "Our position, Your Honor, is this is neither one. This is not an index." It is both and it also is a MURKIN record. Every single item is clearly identified with this codeword and that file number and all nonexempt MURKIN records were to have been provided. My counsel then read the FBI's own description of its abstracts. He referred to the set arranged in chronological order as "of incalculable value to anyone engaged in research" because the files themselves are not in chronological order. (Page 30) While defendant's counsel here did acknowledge the existence of the second set of abstracts, he stated untruthfully that it is filed by case. While this means he acknowledged that it is a MURKIN record, in fact the second set is filed by serial number. He was more pointedly untruthful when he returned to this to say, "We don't have the abstract cards in a numerical sequence." (Page 34) In fact, when they were finally provided, the numerical set rather than the more important original, which is in chronological order, is the set provided. Without any question it is in "numerical sequence." Yet when my counsel, who had just read the FBI's own description to him and the Court, reminded him there are two separate sets, he was so totally unconcerned that his untruth was proven to his face to be untrth by the FBI's own official description that he again told the Court, "No, that is not the way it is." (Page 35)

152. Defendant's counsel, who was accompanied by FBI house counsel and the supervisor assigned to this case, continued to build his stone wall on February 8, 1980. He then (and on other occasions) tried to make little of the value and pertinence of the abstracts by repeating the lie that they merely "were prepared by secretaries, they are secretarial records." (Page 6)

153. When the Court told him that the abstracts are within my requests (Page 7), he condescended to say, "I appreciate your comments." The Court told him sharply, "That's not a comment. That's a finding ... I am ordering that they be provided to him."

154. Even then he continued stonewalling and deliberate obfuscation. He sought to completely alter what the Court had ordered. He told the Court, "You want us to provide all of the excised cards to plaintiff. We will do that." (Page 10) But nothing had been said about excised cards and without processing there could be, as he also knew, no excisions. The Court told him, "Hold it. That isn't quite what the Court ruled. The Court has ruled he shall receive every card having to do with the Martin Luther King assassination."

155. To this day defendant has not done as the Court ordered. I have not received the chronological and more important set of the abstracts and I have not received the many other cards, including index cards, "having to do with the Martin Luther King assassination."

156. But defendant's counsel still sought to stonewall and withhold. To this end he took a letter written to me by Director Kelley about what has nothing at all to do with the abstracts. It pertained to what had been improperly withheld under the Stipulation. The letter listed some of this improper withholding and stated I could have them if I asked again. But when I made that request, it was again ignored. In the midst of this (at Page 11), he admitted, "There is a MURKIN index." As I state above, I have not received it. He followed this with another untruth, obviously untruthful from the Court's ruling on the abstracts and Director Kelley's letter, "we have turned over every document that we think we can turn over ... there is no way to get anything else." Despite the success of his stonewalling, thereafter I received 10,000 pages or more. It thus is obvious that he had not "turned over every document that we think we can turn over: and that there certainly was a "way to get anything else." Or, the exact opposite of what he said is the truth.

157. He made further efforts to withhold the abstracts and not comply with the Court's order when he stated (on Page 12), "it will be about six months before we will be able to begin any of the other procedures involved in clearing this case." This also was not true. This old case in Court took processing precedence. Complete compliance had been promised by November 1, 1977, more than two years earlier. And, if defendant had "turned over every document," nothing remained to be processed after six months more elapsed. This untruth was a clear effort to intimidate the wearied Court and the wearied plaintiff and his counsel.

158. He also wanted any action on the abstracts delayed until after the Court acted on his motion for summary judgment. If the Court had agreed, it would have added months more to the four years of defendant's stonewalling and withholding.

Untruths About Other Components, Especially Civil Rights Division

159. While the greatest volume of defendant's records are those of the FBI, other components have significant and significant quantities of records. The untruths about them served also to stonewall and withhold. Searches required for compliance were never made in some components, some have never complied at all, some responded evasively and untruthfully. I had to file other litigation to obtain some records of some offices. An important component, the Civil Rights Division, dribbled records out over a period of about eight years after the first of its repeated false claims of full compliance made by both counsel and affidavit.

160. The King assassination is a civil rights case and with the Department, other than the FBI, for the most part - but not exclusively - was assigned to CRD. However, such matters as the extradition were handled by Criminal Division, whose evasive response is that it would not have established a new file of its own.

161. Some of the more important records, although reported in the press contemporaneously, still have not been provided. AAmong these are the Attorney General's involvement in the plea bargaining in a nonfederal prosecution.

162. There is total noncompliance and not even the reporting of a search, to the best of my recollection, by the Community Relations Service. I provided an undisputed affidavit in which I state that, although the black community was led to believe this component was created for its protection, in fact it was an agency for spying on the black community. As I have already stated, a CBS representative was traveling with Dr. King and was only a few feet from him when he was assassinated. That representative filed a report, as he would have been expected to, and it has not been provided or even claimed to have been searched for. Other components also have been nonresponsive despite a round-robin notification from the appeals office.

163. CRD had several kinds of involvement. Some of these involvements are embarrassing to defendant. For example, it collected evidence for the Ray extradition. In this it prepared for and secured the signature of a chronic drunk to an affidavit known to be misleading and untruthful. His was defendant's only "evidence"

placing Ray near the scene of the crime. It was used to represent that Ray was at the scene of the crime. However, defendant's records reflect the fact that this same "witness" had already made a negative identification of Ray, to the FBI and to the media, prior to the filing of the false affidavit, prepared by CRD. Without it, there could have been no extradition.

164. The charge filed against Ray, the only means by which federal jurisdiction could have been asserted, is violation of the civil rights act. There were several reinvestigations of the original investigation and these are included within my requests. At least one was by CRD and it provided personnel to another such investigation. While after years of stonewalling I received a redacted copy of the CRD's report on its own investigation, the backstopping for that lengthy document remains withheld.

165. The case record reflects the fact that the CRD, through Stephen Horn, encouraged the FBI not to comply with my requests. He then urged his superiors first to deny and withhold and then contrive some convenient legalism to sanctify this deliberate bad faith.

166. As soon as I received the first CRD records, then represented as total compliance, I filed an immediate appeal because CRD withheld the public domain extensively. Those records have never been reprocessed. While the original reasons for withholding ranged from ignorance to incompetence, the former astounding for that division, there is no excuse for the ignoring of my document appeals, the first of which went directly to CRD. Later I learned that the CRD FOIA person assigned to this case had not read the books on the subject. CRD had copies of mine since 1972. When I gave defendant a consolidated index to all the books, CRD made no use of it. CRD continues to withhold the nonexempt information.

167. What CRD withheld that was public domain includes the name of a murdered Detroit gangster whose body was found in the trunk of a car abandoned at the Atlanta airport, reported in the newspapers; the self-confessed fabrications of a convicted youthful drug offender and his mother, who used his fabrications in a bid for exculpation with such success that they were on coast-to-coast TV; and what the FBI had already disclosed. My appeals were never acted on and CRD continues to withhold this and other information like it.

168. To cover CRD's noncompliances, a series of untruthful representations

were made to the Court and an overtly perjurious affidavit was filed. While the summary from which I prepare this affidavit does not include all of these, for that was not my purpose in preparing the summary for my counsel, it does include enough to establish deliberate and perpetual untruthfulness.

169. At the second calendar call, on March 21, 1976, defendant's counsel told the Court, "The Civil Rights Division review should be completed by next week." He then also forecast the end of this litigation.

170. Pertaining to compliance, on September 16, 1976, the Court asked defendant's counsel, "Has any component been copmpleted?" He replied, "Yes. The Civil Rights Division and the Criminal Division, insofar as the December 23 request." (Page 7)

171. Later at that calendar call, which was for the taking of testimony relating to compliance, my counsel objected to the absence of a witness he had specifically requested, by name: "I requested the presence of Mr. (Stephen) Horn of the Civil Rights Division, because they have - - Mr. Horn has executed an affidavit and we challenged that affidavit. We think that if we had Mr. Horn here he would be forced to admit that it (his affidavit) is untrue, that he is aware of documents, the Civil Rights Division has documents which they have not given us, which are responsive to Mr. Weisberg's request." (Page 47)

172. Mr. Horn swore that he had provided all pertinent CRD records and that he knew of no other responsive records anywhere in the entire Department of Justice. In this excess, which is untruhhful on all counts, he was also a mite careless. He identified records that he did not provide. It required more than five years before the last of those still not withheld weee provided. The last batch I received - only this year - is at least ten times the volume of all prior CRD dribblings out of pertinent records.

173. In Mr. Horn's absence defendant's counsel, as quoted above, told the Court that CRD had fully complied, which is untruthful. Mr. Horn, the others in CRD who replaced him in this case and all counsel have ignored the sworn proof I provided of his false swearing. My accuracy in this allegation is established by the subsequent productinn of CRD records he withheld.

174. On August 12, 1977, my counsel told the Court that CRD had written "saying that they had processed through their final administrative appeal" amd that,

despite their prior sworn attestations of complete compliance, "there would be more documents forthcoming." Defendant's counsel sought to forestall the filing of a motion pertaining to CRD while saying that was not his purpose. He said, "I am not trying to dissuade counsel from filing the motion, but at least as far as Civil Rights, rather than file the motion, if I would set up a conference again (sic) and perhaps we can work something out." The Court agreed. (Page 4) He never set up any conference with CRD to which I was invited. They did not even phone me.

175. My sworn allegation of Mr. Horn's falsity remained ignored. When present defendant's counsel was on the case, my counsel reminded him of this. (On December 20, 1979, Page 22) My counsel also informed him that documents which CRD did provide refer to others it did not provide. He added that CRD had provided about 200 pages and on January 3, 1980, he stated, "it defies the imagination that the Civil Rights Division, with its heavy involvement in the original investigation of Dr. King's assassination and its subsequent investigation in several reviews of the FBI's role in investigating the assassination, has only 200 pages of documents." (Pages 16-17) He referred to a CRD letter describing its files as "substantial" and stated that 200 pages is not substantial. He also referred to defendant's press release describing the large number of files CRD had and reviewed, reminded defendant's counsel of the pertinent Item of my request. In response I received nothing, not even a pro forma denial of the existence of such records. Ignoring this accurate information, doing nothing about it, not even making a pro forma response, is bad faith. Defendant has an obligation to respond to FOIA requests and appeals.

Untruths About the Stipulation

176. In the summer of 1977 the Court was receptive to my Vaughn motion and so indicated. FBI FOIA supervisor Hartingh, who is a lawyer and then was assigned to this case, knowing full well from many samples I had given him and from my unanswered correspondence relating to unjustifiable withholdings that they could not be justified, exploited my poor health and unhidden desire to obtain what he was withholding. He offered, if I would forego a Vaughn motion on FBI records, to have the FBI do certain things it had been stonewalling and do them in an agreed way and by an agreed time. Because of my impaired health and the great amount of what

remains of my life defendant had wasted in this litigation, I accepted his offer, conditional upon the FBI's meeting all of the provisions of the Stipulation. At my insistence this was written into it. Hartingh was aware of my serious health problems. He knew that acute thrombophlebitis was diagnosed in late 1975 hospitalization and that an arterial obstruction had also just been diagnosed. I was so weak at the time in question that Hartingh, personally, arranged to park my counsel's car inside the FBI building because I was not able to talk to it from a parking lot. Moreover, the Stipulation bound me to nothing, absolutely nothing, other than a waiver of this Vaughn motion, and then only if the FBI performed as agreed on all the other provisions of the Stipulation. What follows does not address all of defendant's bad faith with regard to the Stipulation. It also does not address all the misrepresentations of the Stipulation by defendant's counsel because all are not included in the summary I prepared and some were not at the calendar calls.

177. Later I learned - and I mince no words - that Hartingh lied and deceived me. He lied in leading me to believe that, without my agreeing to the Stipulation, I would not get the Memphis MURKIN records. He lied in telling me that all records pertaining to all members of the Ray family are filed under MURKIN and could not be retrieved by the field offices without specification of MURKIN records. He lied in leading me to believe that all field office information pertaining to the Ray family would be in St. Louis files, except for Jerry Ray, where the office would be Chicago. My agreeing to some of the provisions of the Stipulation was based on his word. His engineering of the Stipulation and his presiding over widespread noncompliance appear to have been a step in his upward career at FBIHQ, which followed immediately.

178. Moreover, as will become clear, he lied in assuring me that the FBI would live up to the letter of the Stipulation. In fact, it violated each and every one of its provisions and, in another act of consummate bad faith, unilaterally rewrote it in the directives he set to the field office. These resulted in automatic noncompliance with and violation of the Stipulation. Both appeals office witnesses, Messrs. Shea and Mitchell, confirmed this on deposition.

179. The Stipulation relates to FBI records only. As it relates to FBI records, all I agreed to do, upon compliance with all its provisions, is waive the Vaughn motion. All the many contrary representations by defendant's counsel at

many calendar calls and in pleadings were knowingly and deliberately untruthful. When one of these misrepresentations was made by defendant's counsel, the Court reread the Stipulation and did not agree with that attempt to stretch it.

180/ Mrs. Zusman, who was spectacular in her fabrications, contrivances and untruths, to say nothing of her defamations, spoke untruthfully about the Stipulation as leading to the consultancy agreement. (May 24, 1978, Page 8) She did admit that the Stipulation required the FBI to respond to "objections to specific deletions," She added that the consultancy was conceived "because we began to meet in November (1977) to try to figure out how the government could bet (get?) a specific list of compaaints from plaintiff because the government did agree in November to go back and rereview the documents that had already been processed and released if the plaintiff could be specific as to the excisions that he was complaining of, which of course is the normal way that these cases are worked." This partial truth also is deliberate misrepresentation.

181. Under the Stipulation, as also wad directed earlier by the Court, records were to be provided as processed, to be sent regularly, without any accumulation of them into large shipments. But defendant stockpiled what had been processed and as a result I soon received packages holding as many as 6,000 uninventoried pages. This made it apparent that if I were to be able to specify noncompliance, which is not merely excisions, I would have to do it as I read those records. I did that, and although the FBI was not required to address what I sent it before November 1, in the belief and the hope that it might have some influence on the incredibly bad processing, I sent these letters to the FBI as rapidly as I could. It is beyond question that, as of the time of the first of the two meetings Mrs. Zusman arranged for November 1977, the one problem the government did not have was getting specifications from me. It already had them. Defendant's real problem is that it could not address them, particularly because, in addition to identifying the record, I provided considerable pertinent information reflecting that the withholdings were not justified. As of the time Mrs. Zusman told the Court this untruth, she knew very well that I had provided this information about the Stipulation records as I read them.

182. As explained to me, defendant's reason for the November 1977 meetings was to avoid unnecessary litigation and to see to it that what Mr. Schaffer described

Read & check. Do I need the "were"

as the FBI's bad conduct with me ended and improprieties were corrected. This was not connected with the Stipulation and my consultancy report reflects this. Most of it was devoted to FBIHQ records, whereas the records covered by the Stipulation are those of the field offices only. (See also my August 16, 1982, affidavit.)

183. Mrs. Zusman's is only one of many admissions that defendant was obligated, in the Stipulation and other agreements, to do what she told the Court: "the government did agree in November to go back and rereview" my complaints. It agreed to this before November, in the August Stipulation. Before then, on a number of written and verbal ossacions, it agreed to this review of the FBIHQ MURKIN file after the last of it was processed. It has never done this. However, after Mr. Shea read my consultancy report, he did testify, on January 12, 1979, as defendant's witness, that the records required reprocessing. In his previously mentioned internal memorandum, the entire text of which was withheld from me under spurious claim to exemption, he also stated explicitly that defendant had lied to and deceived the Courts and me and had failed to make the necessary searches. (My counsel provided this memorandum so I do not attach it again.)

184. Contrary to this, Ms. Ginsberg told the Court on September 28, 1978, that "Mr. Shea has also concluded that the FBI has met all its burdens under the stipulation." This is not true. Mr. Shea testified that the records required processing and that the use of exemptions ranged from entirely inappropriate to unjustified and not in accord with accepted standards. His several reports to the Court and his deposition testimony reflect that the FBI violated the terms of the Stipulation in rewriting its provisions. He also held that withholding from the field office records what allegedly had been sent to FBIHQ is not in accord with the Stipulation. And while the Court in this case did not decide with regard to not providing copies of field office records because of the FBI presumption that "duplicates" were provided by FBIHQ, he held that these are not identical copies, thus not "duplicates," and should be provided by the field offices.

185. In a similar situation created by the FBI in C.A. 78-0322, Mr. Shea found that all records sent to FBIHQ by the field offices were not "previously processed" and disclosed by FBIHQ. This compelled the FBI to provide approximately 3,500 pages allegedly but not previously processed. This and other violations of the Stipulation are something less than Ms. Ginsberg's representation that the FBI

met all its burdens under the Stipulation.

186. It simply is not possible for any FOIA plaintiff to keep up with and refute all the deliberate untruths by defendant's counsel with regard to this simple and quite limited Stipulation. Another one also was on September 28. Ms. Ginsberg, with Mrs. Zusman present, told the Court that records withheld under Item 7 of my April 15 request continued to be withheld because they are not within the Stipulation. The Stipulation has no connection with that request or any records other than field office records. The records about which the Court questioned her are FBIHQ publicity and propaganda records, from its "Research Matters" or 94 files. The question pertained to a missing attachment, one of some 200 missing attachments, and it pertained to the FBI sycophant Gerold Frank, who is within my Item 7. The Court asked her, "Where would you assume that a memorandum such as this would be filed? I think that becomes important, because I would certainly assume that it should have been filed under the Martin Luther King assassination." (Page 5) Ms. Ginsberg replied, after showing the record to Supervisor Hartingh and discussing it with him, "the memorandum would most likely be in the Gerold Frank file, who is the subject of this memorandum. However," - and here is the deliberate deception and misrepresentation - "the Gerold Frank file is not one of the files that plaintiff's counsel and plaintiff and the Government agreed would be searched a year ago." This can refer to the Stipulation only and there was no possible connection with the FBIHQ Gerold Frank file and the Stipulation pertaining to <u>field office files only</u>. Moreover, not only is Gerold Frank named in Item 7 of my April 15 request, which required the searching of the FBIHQ Gerold Frank file for compliance, but first Ms. Ginsberg personally and then Mr. Cole personally both refused, during the depositions when we provided this and similar records, to have the Gerold Frank and other similar pertinent files searched. This is an additional flaunting of bad faith. It compounds the bad faith of Ms. Ginsberg's deliberate deception of the Court.

187. There never was any kind of an agreement by me not to search any files. To the contrary, from the very first I continually requested specific searches that were, except for a few intercessions by Mr. Shea, always refused. In this case I was able to do what most plaintiffs are not able to do, identify a specific file by its actual file number. (I also did this with other pertinent 94 and other files.) The FBI's arrogant refusal to search clearly appropriate and pertinent files would

have been impossible without the lusty collaboration in this bad faith of all defendant's counsel in this case. The bad faith of all of defendant's counsel required the dishonesties all practiced before this Court.

188. On September 28, 1978, Ms. Ginsberg repeated the same misrepresentations in defendant's successful effort to avoid making the searches required for compliance with Item 7 of my April 15 request. Once again the subject was Gerold Frank records. My counsel had informed the Court that records pertaining to him are within that request. Ms. Ginsberg's response was, "The fact is we are operating under a stipulation filed with the Court and approved by the Court in August 1977. And the Gerold Frank file is not a part of that stipulation." (Page 8) At this point she also misrepresented the nature of the request.

189. My counsel then reported to the Court other violations of the Stipulation. Ms. Ginsberg then responded, "I simply can't allow Mr. Lesar to continue with these kinds of misrepresentations that he is making. And I am afraid I have to burden the Court with another piece of paper." (Page 12) It was a letter to my counsel from Mr. Shea. My counsel had protested violation of the Stipulation by dumping some 6,000 pages on me in one carton that I also could not handle. Ms. Ginsberg, who accused my counsel of misrepresentation when he told the precise truth, followed with outright lies: "rather than dumping 6,000 pages of documents, periodic releases were made, beginning with August 19 and August 30, then September 15 and September 29, October had several releases ending with October 26, 1978."

190. Her representation is a fabrication, whether by her or by the FBI I cannot say. The truth is well recorded in my immediate and vigorous protest to the FBI because the Court had directed and the Stipulation required periodic releases as records were processed. Until the Stipulation, releases had been approximately weekly.

191. After two months of medication and therapy, by the end of September I had recovered sufficient strength to be permitted to address a college. In my absence, and <u>on the last day permitted by the Stipulation for Memphis records, a single carton of them totaling about 6,000 pages reached my home</u>. Fortunately, we had a husky and accommodating rural carrier. Instead of leaving the carton on the road at my mailbox, which is 000 feet from our home and invisible from it, or leaving a note for me to pick it up at the post office, he took it to my home and [illegible].

placed it on the kitchen floor. My wife had to avoid it until I returned. I then was unable to move it, so I had to open it and, finding no inventory, had to spread out and attempt to identify the various volumes, of which there were a great many. I had to ask the FBI for the accounting it knew very well should have accompanied these records. (This is what led Hartingh to provide the incomplete list of them, Exhibit 1 above.) After my strong protest over this deliberate abuse and deliberate violation of the Stipulation reached Hartingh he phoned me, I believe for the only time in this long case, and asked at the outset, "Are you still mad at us?" Ms. Ginsberg, even if deceived by the FBI, knew better because this was one of the protests I made at the first November 1977 conference and the FBI did not deny it.

192. The FBI apparently relished being able to abuse an aging, ill and weakened plaintiff because it pulled a similar dirty trick that very day. Just before the beginning of that conference, the FBI sought to give me the allegedly reprosessed prosecutorial index. It tried to get me to accept some 3,000 unwrapped pages. I protested that I would not be able to carry them safely to the Greyhound station and then on the bus back to Frederick. I asked that they be cartoned for receipt after that conference. At the end of the conference we returned to the FBI building. Those 3,000 pages still had not been cartoned. At my insistence the agents did find a carton, but it was much too small. As a result, some of these pages had to be squeezed into my already overloaded attache case. I was not able to carry both so my counsel carried the box and escorted me to the Greyhound terminal. As I tried to carry both the box and the attache case down the aisle of the bus, the case bumped the arm of a set and then was forced into my abdomen. Since 1975 I have lived on a high level of anticoagulant, as the FBI agents knew very well. They also knew that my doctors warned me against any fall or cut or bruising, no matter how slight, because I can bleed to death from them. On the bus I suffered a very large internal abdominal hemorrhage. It grew to the size of a turkey egg and while it had no serious consequences, it could have been dangerous, even fatal.

193. These are not matters I am likely to forget. I can and I have lost consciousness from just bending over, so if the bulk and weight of that carton of Memphis records had not been more than I could then handle, I might have injured myself seriously in trying to lift it and carry it to where I could spread out its

contents. It was the largest single packageI have ever received from the FBI and it was sent me many. There was no need for this kind of abuse as there was no excuse for its failure to mail these 3,000 pages of the prosecutorial index. Or for Ms. Ginsberg to add her abuse.

194. Ms. Ginsberg gave the dates of shipment, not the volume of each shipment. They included the records of seven field offices, as she knew. In her list the last date is the day before the time the last of these records were required to be in my possession under the Stipulation.

195. The FBI's records disclose the exact number of pages in each shipment for two reasons: its internal records contain information it withholds from me (otherwise, what is often gibberish would deny it knowledge of what it sent), and when I was paying for the records, as I was then, it included a bill at ten cents per page. It thus is inevitable that with the records before her Ms. Ginsberg should have known that she was making false accusations to prejudice the Court and to accomplish her ulterior and improper purposes in her complete fabricatons about the provisions of the Stipulation.

196. Based on what I learned later and informed the Court about under oath, this is an even more outrageous demonstration of bad faith. As the Court had directed and the Stipulation required, records within the Stipulation were to have been sent to me as they were processed. As I state above, Hartingh lied and deceived my counsel and me in order to obtain a waiver of the Vaughn motion. I was deceived into believing that I would not get the Memphis and other field office records unless the Court directed it. However, I learned later that this was false because the processing of those records had begun before Hartingh first proposed the Stipulaton. In the earlier affidavit I provided the Court with the dates of processing. These dates establish the deliberateness of defendant's violation of the Stipulation and the directive of the Court pertaining to regular releases and prohibiting stockpiling and dumping large quantities of records on me.

197. When learned and experienced defendant's counsel misrepresent the Stipulation to the Court, it is not an accident. Yet despite the number of times they were corrected in their knowingly false representations of the Stipulation, they persisted in their misrepresentations. Present defendant's counsel told the Court what in honesty cannot really be described as less than deliberate

untruthfulness when on November 28, 1979, he stated, "I am proceeding in this case on the basis that we are restricted to the stipulation that was signed in August of 1977, and that that controls the further activities that will be undertaken in this case." (Page 5) My counsel again pointed out that, even if the Stipulation had not been violated and thus made invalid by defendant, it pertains only to the Vaughn waiver and to the FBI only among defendant's components. The Court stated, "That is true." Nonetheless, defendant persisted in obdurate refusal to provide pertinent and withheld records except when compelled by the Court to disclose them.

198. The Stipulation is short and clearly phrased. It is not possible to misread it to include any other components under any conditions or to include other and undisclosed FBIHQ records. All I waived is the Vaughn motion that is limited to already disclosed FBI records and the validity of the entire Stipulation is based upon full compliance with all its provisions. Instead of compliance there was unnecessary and vindictive violation, which nullified the Stipulation.

UNTRUTHS PERTAINING TO SEARCHES

199. Compliance with FOIA requests begins with searches. In this case the defendant presented several FBI FOIA supervisors to testify to FBI practice, the import being that it would be the practice in this case. These supervisors testified to when, by whom and how searches were made, and that there is a dated record of the initial searches. Based on this the requester is required to be notified of the approximate number of pages involved and their cost. This was not the practice with me (in this or any other case). In the corridor immediately after the first calendar call, I asked AUSA Dugan to ask the FBI to conform with the regulations. I told him that I had to know the cost of what I was getting into. Although he promised to convey my message to the FBI, according to FBI Legal Counsel Division SA Parle Blake, he did not do so. When I subpoenaed the records relating to searches, as stated above, defendant just ignored the subpoena. If defendant had made good-faith searches - even anything at all that could be claimed to be a search - records establishing this would be flaunted, not withheld. Defendant does not present such records because they do not exist. They do not exist because from the first, even when presenting testimony to what would be done, defendant had no intention of abiding by the regulations and normal practice with me and never has, in this or any other of my cases.

200. The case record does not hold any attestation to searches to comply with all the Items of my December 23, 1975, request although there are some false, evasive and incomplete claims to partial compliance, and it holds only false attestations relating to my April 15, 1975, request. The case record holds my proofs of this false swearing and it remains not only unrefuted - it is uncontested because defendant ignored and continues to ignore it. Over and over again, beginning long before the processing of the first MURKIN record, I correctly informed the Court that compliance with my actual request is impossible if records from MURKIN only were provided. The case record also holds repetitious proofs of my accuracy in this regard. This also means that the case record holds repetitious proofs of defendant's deliberate dishonesty in assuring the Court that providing the FBIHQ MURKIN file would comply completely with my actual requests.

201. There was never any real search for any compliance in this case. SA Kilty was well aware, for example, that he withheld most of the information pertaining to scientific tests within my April 15 request. SA Wiseman, for another example, was well aware that he swore falsely in attesting that SA Kilty had made searches when Kilty informed him in writing he could not and would not. Kilty also testified on deposition - represented by present defendant's counsel - that he did not and could not make any search responsive to any but the first four Items of that request. (Kilty's November 14, 1975, notification to Wiseman is in the case record. Initially FBIHQ had it filed as "Subversive Matter" because it regarded and filed information pertaining to my FOIA requests as subversive matter. Later this record was transferred to an FOIA file.)

202. Thus, even if the falsely sworn claims to <u>compliance</u> were not falsely sworn, the fact is that there never has been a <u>search</u> to comply with all the Items of my requests. And, despite his repeated contrary representations to the Court, present defendant's counsel has personal knowledge of this because he represented Kilty on deposition. So also does the FBI's Legal Counsel Division because its SA Jack Slicks also represented Kilty then.

203. SA John Phillips, who also is supervisor on this case, inadvertently disclosed the FBI's practice with regard to me and my requests in an affidavit he filed in C.A. 78-0322. He stated that when my requests litigated in that case were received, instead of making the normal and required searches, as testified to in

some detail in this case in September 1976 by several FBI FOIA supervisors, the FBIHQ FOIPA chief merely decided arbitrarily what would be provided. In that case, as in this, it was defendant's intent not to make the required and normal searches. Instead, records more to the FBI's liking were substituted. That is precisely what the FBI did in this case and it was sworn to by the supervisor, sho also is supervisor in this case.

204. This bad faith is magnified by other of defendant's untruths, some under oath and known to be untrue when they were uttered. One was to accomplish the improper ulterior purpose of avoiding searches at the field offices. SA Donald Smith had to know he was lying when he testified on September 8, 1976, that "everything that is in the field offices, particularly in a case like this, would be at headquarters, particularly in the assassination of Dr. King." (Page 34) This lie was repeated to the Court later by Hartingh, who also had to know this was a lie when he uttered it. When he failed in his purpose in this lie and the FBI had to provide field office records, he, as supervisor, provided many thousands of pages of field office records that are not at FBIHQ. (He never retracted or apologized for this lie.) The fact, as every special agent knows, is that the field offices hold information they do not send to FBIHQ, information that is sent to FBIHQ in summary form only, and information that is sent to FBIHQ in censored form when distribution is expected. It simply is not possible that any special agent does not know these basic truths as a result of his work in the field because his field work requires this knowledge.

205. This bad-faith effort to avoid field office searches followed defendant's announced intention of substituting the FBIHQ MURKIN file for searches responsive to my actual requests.

206. Defendant never made any search for the prosecutorial index, even after I identified it and requested that it be provided. After the Court ordered that it be provided, at the beginning of the October 8, 1976, calendar call defendant's counsel told the Court that the FBI had located this allegedly missing record. If he had spoken in good faith he would have told the Court that the FBI only pretended not to be able to find it and that I had told the FBI where it was. If there had been any search at all, defendant would have known by the same means I knew - from the records provided in this litigation. The FBI had loaned this

index to CRD and CRD had it. However, CRD had sworn to compliance without producing it, even though it is within Item 21 of my December 23 request. CRD also did not search for and provide this index or return it for the FBI to provide. Without making this search, CRD still had sworn to compliance. If either agency had made any search, each would have known immediately where it was because the record of both disclosed this information to me.

207. At the September 28, 1978, calendar call my counsel reported several other instances of bad faith. He stated again that providing the MURKIN file did not comply with my actual requests, a statement defendant has never even attempted to refute (Pages 5-6); that the FBI has its own ways of filing and no requester is in a position to know how everything is filed; that among other things it has "do not file" files, "not recorded" records, "dead filed" and even "new dead" files. He also reported that some of the worksheets are phonies, using as an example a worksheet provided in this case listing an Atlanta record as of two pages, both provided, when in fact in another lawsuit that record was shown to have 27 pages. (Pages 6-7). In this litigation I have obtained FBI records referring to such strange files as "do not file," "dead" amd "new dead" files, but none have been provided and there is no attestation that none are pertinent in this case or do not exist. No search has been made for the other 25 pages of that Atlanta record.

208. At the beginning of the calendar call of November 21, 1978, Ms. Ginsberg reported the belated disclosure of the "Long tickler." She identified it as "460 pages of the (FBI's) Civil Rights Unit's documents on the investigation, called the tickler." (Page 2) Here also defendant had insisted first that the record did not exist, and after I proved its existence, insisted that it could not be located. Mr. Shea finally found it where I suggested he look. By then - and after the filing of this case - the FBI had destroyed most of it. Ms. Ginsberg did describe that record as one of the FBI's Civil Rights Unit. Yet defendant had steadfastly refused to make any searches in any of the FBI's divisions and had claimed that none have any records.

209. When a special divisional record like the Long tickler still has 460 pages after most of it is destroyed, there is ample indication that these special dividional records, even if only compilations of other records and annotations of them, are of considerable size and considerable importance.

210. That the reason defendant refused to search for and provide them is because they are embarrassing is disclosed by the content of what remains of the Long tickler. It has many importances, all embarrassing to defendant. It is a political, not only an investigative, compilation. It included many records that Ms. Ginsberg herself described as "on the investigation," yet they are not MURKIN records. This proves the dishonesty of defendant's representation to the Court that all pertinent information is in the MURKIN file.

211. It also, among these non-MURKIN records which are pertinent to the King assassination investigation, holds proof of the falsity of defendant's representations to the Court and me that neither the Ray family nor I was surveilled. The Long tickler proves we both were. (I address this further below.)

212. At this point on November 21, 1978, Ms. Ginsberg gave the Court a dishonest representation of my request, as "whether or not there was ever an FBI wiretap on them (my counsel and me) and a check of the electronic surveillance indices, which was updated on November 13th of this year, reveals that neither of them is listed and that they were never identifiably overheard in a conversation, nor were they ever identified as the subject of an overheard conversation." (Page 3) Where this is not just plain false it is evasive. My request includes and says it includes any and all forms of surveillance, not just electronic and not only of FBI origin. It also is not limited to my counsel and me. It includes all of Ray's former counsel, for example. Nonetheless, despite Ms. Ginsberg's assurances to the contrary, I was overheadd on an unauthorized tap. This is disclosed in the Long tickler. (It also is disclosed in pertinent records that were not provided to me but were provided to Jerry Ray.) Instead of filing this in MURKIN, as I have previously attested without dispute, this revelation of having overheard Jerry Ray phone me on his sister Carol Pepper's phone is actually filed under "bank robberies," of all things, and in five different places, according to the incomplete records I have that were not provided to me from the MURKIN file.

213. Whether my counsel and I and the other persons Ms. Ginsberg did not mention were the "subjects" of surveillance, defendant's formuation, is immaterial to the request. It is defendant's revision for the stonewalling and noncompliance. As soon as I heard this first dishonest misrepresentation of my actual request, I corrected it but never received any response and no searches were made.

214. That is not the only time I was picked up electronically, as I also informed defendant.

215. One form of surveillance is physical, "FISUR" to the FBI. The FBI itself subjected at least Jerry and John Ray to physical surveillance, and they were the "subjects." "FISUR" of Jerry Ray also is in the "bank robbery" records given to him but withheld from me.

216. The sheriff intercepted James Earl Ray's mail, including all his correspondence with his counsel and the judge. He gave copies to the FBI. This does not appear in the provided records pertaining to the judge whose mail was intercepted. It does not appear in any of the MURKIN records pertaining to Ray's counsel. This means that the required searches were not made.

217. With regard to one of Ray's counsel, Bernard Fensterwald, Jr., in FBI records pertaining to him there is a round-robin directive from FBIHQ to all the field offices telling them to discontinue electronic surveillances on him and co-counsel in another case. Pertinent earlier records remain withheld, after I provided this undisputed information to the Court, defendant's counsel and in an appeal that also remains ignored.

218. With regard to another of Ray's counsel, J. B. Stoner, the FBI provided nothing. When I proved that the FBI had surveillance records on him and showed how some were hidden in the files, the FBI provided a few pages only. It disclosed much more to Stoner, many hundreds of pages more. It made no claim to exemption to withhold those records from me. It did not search for them. Whether or not the FBI has additional records pertaining to surveillances of Stoner, at least one other domponent does and from what I know of FBI practices, this also means that the FBI conducted a pertinent investigation that it did not search for and withholds. Stoner told me more than a decade ago that one of those the FBI had surveilling him tried to entrap him. When the Department's Internal Security Division asked me to visit it about another matter, I reported this. When it informed the FBI, the FBI contorted that into a conspiracy by Stoner and me to defame the FBI. (This also is in the case record and that it was deliberate FBI corruption of fact to defame me remains undisputed.) These and similar matters indicate that there was no search to comply with the surveillance Item of my request. It also underscores the purposes served by Ms. Ginsberg's knowing misrepresentation quoted above.

219. The disclosure to him of the Jerry Ray records and their content prove the dishonest intent of the false assurances provided by the FBI through Hartingh to get me to agree to the Stipulation. He assured me that in the field offices all such records would be filed in MURKIN and that specification of MURKIN in the Stipulation was required for proper searches in the field offices.

220. At the time in question Jerry Ray phoned me more than one. This inadvertent disclosure that the Rays were wiretapped indicates that there are these and other pertinent records still withheld.

221. The inadvertently disclosed record is a very short summary which does not mention any electronic surveillance. This is probably the only reason it was disclosed. However, there is no other way in which the FBI could have obtained that information. The actual reports on the interception were not disclosed to Jerry Ray.

222. This matter also reflects that the FBI lies even to the Attorney General. Several of the few originally withheld and then disclosed "JUNE" records ("JUNE" is FBI code for surveillance information) include the FBI request for permission to wiretap Mrs. Carol Pepper, the Ray sister. The FBI admitted to the Attorney General that what it proposed was illegal and unconstitutional, that it could make it impossible to try Ray if disclosed, and that the Peppers could sue for and collect damages. It stated that its sole puppose was to determine whether Ray phoned his sister so it might locate him. It argued that this was the most important of the many considerations. Later, after Ray was apprehended in London, the FBI, with feigned righteous indignation, withdrew this request on which Attorney General Clark had not acted.

223. What remains of the Long tickler and the "bank robbery" records disclosed to Jerry Ray make it apparent that of the Rays at least the sister was wiretapped. It thus appears that the FBI was doing no more than seeking the sanction of the Attorney General that Director Hoover and his close associates detested to cover the illegal and unconstitutional endeavor on which it was already launched. With regard to Mrs. Pepper, the actuality is that the FBI knew that James Earl Ray had not seen her since she was a little girl and did not know where she was or how to get in touch with her.

224. Because I have some understanding of FBI jargon, I perceived in a

MURKIN record that FBIHQ ordered the St. Louis office to surveil Mrs. Pepper's bank account. Later, copies of her accounts (she shifted them for the freebees) turned up in the possession of a sycophantic writer who indeed wrote what the FBI wanted written. Mrs. Pepper informed me that she had not given him copies.

225. The FBI's MURKIN records disclose that Jerry Ray's mail was under surveillance. The Chicago office did not itself conduct this surveillance. It was done for the FBI. This is one of the reasons it pretends that the request includes only what it did, which is not true. The one disclosed instance has to do with Jerry Ray's flying to Camden, New Jersey, to sleep with a woman about whom he learned in a "lonely hearts" publication. The FBI made her a symbol informer before Jerry reached her bed. Although the FBI did disclose this, it did not disclose her actual reports and other pertinent information.

226. Whether it is mail or female, a bed or a bug, a mike or a shadow, it is all surveillance and within the request; but aside from the paraphrases in MURKIN, all original and pertinent information, including the actual reports, the informer contact reports and other such information, is withheld.

227. Bearing on defendant's intent and general obduracy, the FBI both disclosed and withheld its informant's name. It also disclosed the name of a woman associate who accompanied her to the airport to pick Jerry Ray up and returned with them. I provided this information in appeals and in affidavits, which means to doubly to defendant and to defendant's counsel, and pointed out that the withholding could defame the woman who did not sleep with Jerry Ray and presumably was not an informer. Despite defendant's claim not to ever withhold what is disclosed and to be ever diligent to avoid harm to the innocent, it refused to reprocess these records and remove the possibility of harm to the innocent. And, as is not at all exceptional, despite defendant's contrary representations, that appeal is among the many that remain entirely ignored.

228. These few instances which come to mind despite the passing of years are enough to show that defendant's representations to the Court about the alleged searches pertaining to surveillances are intentionally evasive, false, misleading and deceptive.

229. Also on November 21, 1978, my counsel noted that I did not receive any information at all pertaining to one of two known St. Louis area FBI symbol informers

who had the Rays and Stoner under surveillance. (Page 4) His name is Geppert, Gebhardt in the transcript. I told Ms. Ginsberg that Geppert had confessed on St. Louis TV and I had a tape of his confession. She asked for the tape and I gave it to her. Despite repeated appeals, I have had no compliance at all, no response of any kind.

230. The second FBI symbol informer is Oliver Patterson. When no choice remained, the FBI provides some of the Oliver Patterson records. This is one of several instances in this case in which, for perceivable political purpose, the FBI disclosed informant names. It disclosed Patterson to the House assassinations committee over his written objections. The disclosed records reflect that this decision was made by a component of which I had never heard before, the Top Echelon Informant Committee. Those pertinent records remain withheld and my repeated appeals remain ignored.

231. Patterson had a woman associate, Susan Wadsworth. She asked me to request the FBI records pertaining to her. She provided notarized authorization for disclosure to me in this case. Despite this the FBI ignored this matter and I have had not even an acknowledgment from the appeals office. (This is not the only instance in which, despite its contrary pretenses, the FBI refused to disclose anything at all to me after I provided written authorization.)

232. Present defendant's counsel entered this case at the November 28, 1979, calendar call with a rather large untruth, that "we have complied with all of the requests of plaintiff to release documents and that, accordingly, a new motion for partial summary judgment, on the basis of scope, will be appropriate." (Page 2) Although he resisted vigorously, until, in his words, he was "blue in the face," he nonetheless was subsequently forced to produce about 10,000 more pages that were within "scope" and had not been searched for.

233. On December 20, 1979, one of my counsel's reminders of searches not yet made was that we had raised the question of the withheld JUNE records many times without any search being made. "We ask about it, we get all kinds of obfuscatory responses, claims that they don't know what the special file room (in which JUNE records are stored) is, claims that there is no index to the special file room. And it goes on and on like that." (Page 25) Defendant's counsel replied with a large untruth, "There is nothing in the JUNE MAIL file relating to this case ...

There is just nothing." (Page 29) I do not recall that Mr. Shea ever acted on my JUNE appeals, which are many. I do know that I attached to each the MURKIN file slip sheets reflecting transfer from the MURKIN FILE of records that remain withheld. They remain MURKIN records but are stored in the JUNE and JUNE MAIL files in, according to the printed FBI forms, FBIHQ's own "special file room." All these records retain their MURKIN file and serial numbers and, absent claim to exemption, are required to be provided in this case. They also are pertinent as surveillance records.

234/ Defendant's counsel added another rather large untruth after admitting that there had never been any JUNE or JUNE MAIL search in this case: "It is true we have not searched the files, because you can't get the information by searching the files." Even more incredibly he compounded this untruth in adding, "That information is retrievable only through a search of the main (MURKIN) file, and that search has been done." (The MURKIN file was not searched; it was processed without search.) MURKIN is precisely where I found proof of the transfers, the charge-out slip sheets, which say precisely where those MURKIN JUNE and JUNE MAIL records are filed. I emphasize that I provided copies of them with my appeals, so defendant knows full well that it is beyond question that the withheld JUNE and JUNE MAIL records are in and are readily retrievable from the special file room by means of the slips I provided which are for that purpose. (There also are unsearched JUNE and JUNE MAIL records that are not MURKIN records.)

235. His blatant untruths did not get less incredible. For example, on January 3, 1980, he told the Court "that the Criminal Division would not have opened their file on Dr. King's assassination because that was not a federal violation." (Page 17) It cannot be that the Criminal Division and defendant's counsel do not know that it is a Civil Rights Act case and that the FBI's MURKIN case is titled "Civil Rights!" It was and it remains a federal case - even though in this case defendant claims not to be able to find the Attorney General's order of the night of the crime. It is an active file and Beckwith testified the case is still open. Moreover, the MURKIN file reflects that the FBI filed charges under this Act against Ray - in Birmingham because it did not trust the United States Attorney in Memphis!

236. Describing defendant's counsel's 20 quoted words as merely incredible

may be too much of an understatement. He knew he was lying to the Court - and he was up to much more. He was hiding the fact that the Criminal Division admitted making no search while he, knowing it, represented that it had in his premature and inappropriate campaigning for summary judgment. Whatever the affiant Buckley of excessively partisan counsel may have meant by "would not have opened their file," (emphasis added) it is conjectural, irrelevant, evasive, incompetent, and no substitute for the search that, while seeking to hide it, this language admits was not made.

237. While records pertaining to the King assassination are not the only records within my requests, there are records that, while pertaining to the King assassination, are not filed under it as a civil-rights violation. Ray was both an escapee and an Unauthorized Flight to Avoid Prosecution case. In both there is federal jurisdiction, as there also was in the extradition, which Criminal Division handled.

238. Whether or not Criminal Division "opened" a file or the file was "their" file is utterly and knowingly irrelevant. Moreover, unless defendant's counsel claims total ignorance of his own case file, he had to know that CRD referred a not inconsiderable number of records back to Criminal Division before disclosure because they originated with Criminal Division.

239. Aside from the willful bad faith counsel's quoted words represent, they also reflect the means by which defendant has prolonged this case extraordinarily and avoided compliance by avoiding anything can be described as searches.

240. This is one of the countless examples of defendant's practice of saying anything - regardless of its untruthfulness-- that at any time appears to be expedient in the pursuit of wrongful purposes. At the same calendar call he proceeded to another example. As usual, he began it with another massive untruth: With regard to maps attributed to Ray, some seized in a completely unnecessary illegality, an FBI burglary, he told the Court what, despite his eloquence, I soon proved to be false: "Your Honor, we don't have any maps. They simply do not exist." (Page 15) Each statement is untrue and both untruths are of such a nature and magnitude they also must be called lies. I promptly proved they are. I provided the FBI's inventories. They establish the existence and possession of the maps. After checking this and prior to his counsel's blatant falsehood, the FBI Director wrote me and

offered them to me because they were withheld improperly under the Stipulation.

241. The matter of these maps is an example of defendant's willingness to lie under oath in the King assassination investigation. In prior affidavits I document this allegation without contradiction or response of any kind. After the Atlanta FBI's completely unnecessary burglary - permissinn of the building owner or a search warrant were readily available - word of it leaked out. Atlanta had informed FBIHQ of the burglary and its loot, in writing. FBIHQ then ordered the Atlanta SAC to execute an affidavit in which he swore that there had not been any burglary. Documentation of this, including the burglar's report and the special handling to FBIHQ, along with the untruthful affidavit, are attached to my prior affidavit.

242. While I have regrettably extensive and disagreeable experience with official falsifications, I still find it beyond belief that defendant and defendant's counsel would dare fabricate like this and then have it sworn to by the FBI's case supervisor because the case record already was so clear on possession, on the strict prohibition of any destruction, and on pinpointing the location of <u>all</u> such evidence not in FBI files. However, if the FBI had divested itself of this evidence, that would be reflected by compliance with Item 2 of my December 23, 1975, request, pertaining to which no search has been attested to or was ever made. It seeks "All receipts for any items of physical evidence."

243. As the case record reflects and as defendant knew independently and prior to the filing of this case, I was the defense investigator in the case of <u>Ray v. Rose</u>. Defendant's permission was required for me to be able to interview prisoners in federal penitentiaries and defendant gave me that permission. Federal district court in Memphis ordered discovery and issued a separate order for me to participate in that discovery. While the time permitted by the prosecution and the situation was limited to two days, in those two days, among other things, I produced proof of the <u>ordered</u> violation of Ray's rights. I also examined <u>nine large cartons of FBI physical evidence</u>. Defendant in this instant cause was the "consultant" on Ray's "security." "Security" consisted of <u>ordering surveillance of all his communications, specifically all of his communications with his lawyers</u>, and keeping him under constant microphone and TV surveillance in the cellblock in which he was the only prisoner, always with guards with him. The security arrangements included

armor-plating all windows. With Ray the only prisoner in a bomb-proof entire cell-block and with 24-hour inside and outside guards, the "security" involved in TV and microphone surveillance inside that cellblock only is not apparent. I believe this accounts for defendant's withholding of the "consultant's" name even though it violates this Court's order. The specific and written instructions to intercept Ray's communications with his lawyers are now in the record of this case. With regard to those nine cartons of evidence, each item of which bears FBI Lab identification and none of which was accompanied by any Lab report, Ray's maps are included. Also included were receipts for the return of some evidence to the FBI. This prompted my request for all such receipts, so any missing evidence would be located automatically. The evidence was loaned for the prosecution. Ray's last appeal was rejected by the Supreme Court early in this instant cause.

244. Not only did defendant in this instant cause use "security" as a device for violating Ray's rights, but also - and pertinent to my unsearched surveillance Item - it was party to continued violation of them after the trial judge issued an order prohibiting any such surveillance. When FBIHQ learned of this order, in line with its basic policy of "cover the Bureau's ---," it directed Memphis to continue to accept the fruits of this surveillance without having copies in its files. (This alone is enough to explain defendant's refusal to make a search to comply with the surveillance Item of my requests.)

245. With regard to the maps, I do not now recall with certainty whether all were loaned to the prosecution. I believe they were. I remember making a careful examination of one of which I had prior knowledge, an annotated map of New Orleans. The FBI claims it investigated conspiracy espects of the crime but nothing provided to me in this case from FBIHQ or the New Orleans office includes any investigation of the numerous places marked on the map the FBI itself says was Ray's. This also bears on refusal to make a real New Orleans search and for what I have already provided for the case record, FBIHQ's directive to New Orleans limiting what it would provide and authorizing a nonfirst-person affidavit attesting to the alleged "search."

246. Moreover, it simply cannot be believed that those cloned by the "greatest file clerk of them all" would not make and keep records of or in any way lose control of the basic evidence in so major an investigation of so important and costly a crime.

247. The enormity of what defendant pulled in these quoted 20 words is magnified by the fact that, even if none of the foregoing was known to those involved in this case by any other means, like examination of their records, it was known because I personally informed defendant's representatives and asked that, if copies could not be provided from copies in defendant's files, the originals or copies be obtained from Memphis. This was refused, but defendant's knowledge of it makes counsel's offense much more deliberate and SA Wood's false testimony much more purposeful.

248. After typical blueness in the face, when ordered by the Court, defendant's counsel finally produced a few photographic copies. Defendant has done nothing abouy retrieving and providing the others whose location would have been established had there been any search at all.

249. Defendant's counsel also tried to deprecate the importance of the map on which the FBI claimed Ray marked the locations of such places as Dr. King's home, church and office. Making it up as he went, he told the Court, "This is a regular $1.25 street map of Atlanta" which I could buy for myself. (Page 16) He added, "If he is really interested in seeing what the street names are, which I admit are hard to see, he could have gotten a street map and figured this out." When he finished with his inappropriate charade, he did acknowledge that there "were a couple of circles that are shown on that map."

250. Although these maps were within the Stipulation and, after being withheld, had been promised in writing by the FBI Director himself, defendant's counsel's games with the Act, the Court and truth were not ended. When this matter came up again on February 28, 1980, he fabricated another untruth, that Atlanta did not have the records it inventoried and said it had. The Atlanta office, he stated, "looked not at the documents themselves, but at their own inventory documents." The fact is that the field offices are required to examine evidence every six months and account for its preservation. I obtained this record in other litigation and provided it to the Court. There also are standing FBI regulations and those of other agencies, like the National Archives, which strictly prohibit the destruction he conjectured. Later, in a moment of carelessness, he provided me with FBI records reflecting that FBIHQ knew Atlanta had what its inventories show it had. They also now are in the case record.

251. To attest to what defendant, if not also the witness, knew was untruthful, he produced the FBI's case supervisor, SA Martin Wood. Wood finally admitted that there were three different Atlanta maps because I had proof of that. Wood testified (Page 21) that it is normal FBI practice to destroy physical evidence. This is not only untrue, but the case record already reflected that I had seen those nine large cartons of it.

252. On cross-examination Wood admitted that he had no knowledge of any such destruction. He had just assumed it. (Page 21) But he persisted. When asked, "Are there no regulations governing destruction of FBI evidence in a criminal case?" he answered, "I am not aware of them." (Page 22)

253. His picture of the nation's preeminent police agency, the fabled FBI, has any employee getting rid of anything at all for any or no reason at all. He knows better.

254. My counsel read him FBI regulations which strictly prohibit what he conjectured and the FBI's proud boast that it "never destroyed an investigative matter of substance." He then asked, "Would you consider evidence located in connection with the apprehension of James Earl Ray to be a matter of substance?" Defendant's counsel interrupted and tried to answer for him. My counsel asked Wood if Ray's fingerprint, which was on a map, would be a matter of substance. (Page 27) Here Wood ran down. He stated, "We will see if we can run it down." (Page 28) That belated and unkept promise was made 11 years after my first request for the evidence the FBI regarded as incriminating and four years after defendant started asking for summary judgment. Defendant's counsel made the same unkept promise, trying again to limit the promised search, "we will ... search for the map with the fingerprint on it that was referred to." (Page 29) (Atlanta had four maps.)

255. Later the same calendar call, after my counsel noted additional pertinent searches not made, defendant's counsel told the Court, "We have told him that we don't have any more documents in any of those files." (Page 41) Even if he was limiting himself to the FBI General Investigative and Crime Records Division, which had been mentioned by my counsel (Page 39), he knew his response was not truthful. He did not address what my counsel at this point told the Court in answer to her question about certain documents, "Wouldn't they all be in the MURKIN file?" My counsel's response was that they would not be and that on deposition we had

learned from Mr. Mitchell that, contrary to what the FBI pretended, those "divisions do maintain their own files." (Mr. Cole represented Mr. Mitchell on deposition.) Moreover, as stated in copies of FBIHQ MURKIN records I have provided the Court, it was the practice of these divisions to remove documents from the Central Records file copies and note this fact on them. Thus, in addition to the need of those divisions to have their own documents, they also had copies that were to have been provided to me from the Central Records copies.

256. Contrary to what defendant's counsel told the Court, his own witness, Mr. Shea's assistant, testified of personal knowledge that the FBI's divisions do have their own files. Ultimately, this wearying untruth succeeded in frustrating the required search.

257. At this point, however, he made no attempt to refute what he knew was irrefutable testimony. Instead, he complained of me, "he thinks we are all liars and that's the basic problem with which I simply cannot deal." (Page 41) The Court said, "The Court does feel perhaps you can submit an affidavit indicating that these things have been encompassed in this search." He told another untruth in his response, "Those have been submitted."

258. My counsel and I went to the FBI building many times for conferences. Those conferences were always in some office we had to take elevators and walk corridors to reach. When Hartingh, who never attested to a search, told me that the divisions had no files of their own, I asked him why there were all those file cabinets I'd seen when going to and at those conferences. He responded evasively and thereafter saw to it that I never got far from the tour entrance. After that the conferences were in some pretty odd and hastily improvised places, ranging from the hallways to an auditorium or two.

259. Department counsel knew that what he told the Court was not true for an additional reason. He represnted SA Kilty on deposition and he heard Kilty testify that the Laboratory had files and that he had searched them. His own case record file also reflects that what he said is not true with such illustrations as the Long tickler, which is a record of Long's division.

260. Reflecting his willingness to have someone swear to anything at all is what he soon told the Court, that he could provide an affidavit. To this the Court stated, "I don't think you are in a position to make an affidavit." (Page 42)

261 Under pressure from the Court he agreed to provide affidavits attesting to "whether or not a search has been made of those particular Division files." (Page 43) I do not recall whether he filed any affidavits, but I do know that they cannot have attested to a search before then and cannot be trusted if they denied having any records after all of what he had just told the Court and had stated earlier.

262. It is pertinent to note again that Mr. Shea informed defendant that the Court and I had been lied to, that promises made to the Court and me had not beenhkept, and that there were pertinent records that were neither provided nor searched for because of tricky filing. In the months since my counsel provided Mr. Shea's memorandum, the entire text of which had been withheld from me under spurious claim to exemption, defendant has made no refutation or even expressed disagreement with what Mr. Shea stated after long inquiry. Defendant's practice is to ignore what cannot be refuted.

263. At the February 26, 1980, calendar call, my counsel informed the Court of noncompliance by a number of defendant's components. (pages 5ff.) With regard to the Community Relations Service (CRS), he provided a record that enclosed a memorandum. Of this both Criminal Division and CRS had copies but the attached memorandum had not been provided. Of the Criminal Division my counsel stated that it had provided an affidavit claiming full compliance. He also reminded the Court that I had attested to the filing of a report by the CRS representative who was with Dr. King when he was assassinated. No exemption was claimed for it and it was not provided. Unable to confront these facts, defendant's counsel merely said, "there's very little I can say. If the affidavits are not true, where are we? We have accomplished nothing through these years of efforts." (Page 10)

264. Soonddefendant's counsel told the Court that "both the Department of Justice and the FBI have previously filed affidavits saying that they have undertaken a reasonable search of materials responsive to Mr. Weisberg's request and have completed that task." (Page 17) What he did not tell the Court is that I had filed counter-affidavits proving them to be falsely sworn, without even a peep from any of the affiants or any of defendant's counsel.

265. A few minutes later defendant's counsel told the Court that the resident agents of FBI field offices have no records. This is a stock untruth, as my counsel underlined in reminding him that "the whole world was put on notice of the kinds of embarrassing things that were kept in the FBI files, when somebody purloined the files kept at the Media, Pennsylvania residency." (Page 28) (Disclosure

of many embarrassing records and widespread page-one attention to them after they were released by the raiders drew considerable attention to the many FBI illegalities and improprieties reflected in its own files.)

266. The residencies are parts of the field offices and they do have field office files as long as they have need for them. It is possible to search the field offices, as waa done in another of my cases, and attest that pertinent field office records are not there and not be entirely untruthful because those records are not physically in the main field office even though they are still field office records and it knows where they are. When this defendant pulled that trick in another case, I informed that court where those records are. This defendant abandoned that false pretense in that case and is trying to whittle down what will be disclosed.

267. One of the promises made in chambers in November 1977 is that defendant would return copies of a photograph and a sketch of another suspect. (An Item of my April 15 request seeks copies of all representations of all other suspects. Then defendant's counsel, based on one of SA Wiseman's affidavits, told the Court that there were no other suspects. When I obtained the FBIHQ MURKIN file, the one Wiseman swore he had searched, the first of several recapitulations stated that as of the very earliest days of the investigation, there were 400 other suspects.) As of this February 26, 1980, calendar call, more than two years later, they had not been provided. Defendant's counsel, as usual willing to say anything that at any time appeared to be expedient, stated, "I don't think there are any photographs." (Page 29) This was after I had informed the Court of lending them to the FBI and had received the FBI's records confirming that I had. (Page 29) Eventually, the FBI did provide copies of what I had loaned it - more than five years late. Obviously, no search had been made despite the promise to the Court.

268. Defendant's counsel then also told the Court, "The FBI really has no idea where it goes from here either, because it can't search files the way the plaintiff seems to think it can search them. It can't take these names that have been provided and do a search on them, because so many of them are subject to privacy requirements and others are files that simply do not exist in the form that he requests." (Page 36) This also is untruthful. The FBI can and is required to search by name. In this case it was directed to make maximum possible disclosure,

a directive it ignored. Until it examines the records it has no way of knowing whether or not any information is exempt. Much is within the public domain now. The FBI is required to begin with the very search it has refused to make and its counsel pretends it cannot make. Nothing is more common in FBI searches than the use of its "see" references. The Court told it to use its "see" references, but it never has. Defendant's use of "form" to describe a file is a deliberate deception and misrepresentation. My request is not by any alleged form. It is for readily identifiable information. This information exists or does not exist. If it exists, there is no question of form. Almost always it is a piece of paper and locating and processing that form presents no legitimate problem at all.

MISREPRESENTATIONS PERTAINING TO MY APPEALS

269. Defendant's counsel regularly misrepresented my appeals and Mr. Shea's testimony about them. Until the Court asked that he be put in charge, a matter about which Ms. Ginsberg promised to inform the Court but never did, I had nothing or almost nothing to do with him. Once the Court asked that I cooperate, I did, at considerable cost in time, transportation, mailing and xeroxing. As I remember a previous affidavit, before I had to move and rearrange those files, they measure about a yard. (There was duplication because one appeal often pertained to more than one subject.) By any measure the effort I expended was enormous. It was, by Mr. Shea's own volunteered testimony as defendant's witness, very helpful to him. However, most of those appeals were never addressed because Mr. Shea did not survive the opposition of the FBI which, he attested in this case, he overruled more than 50 percent of the time. In making the false pretense that Mr. Shea did not support me - and he did, among other things, testify that the MURKIN file required reprocessing - on September 28, 1979, less than four months before he testified, Ms. Ginsberg attempted to deprecate the permeating noncompliance. In the course of her false pretense she stated, "there have been claims that twice-daily reports were given to the Attorney General." (Page 2) Of this she stated the utterly irrelevant, "Mr. Shea's review has found no documents specifically labeled 'twice daily reports.'" (emphasis added) I did not state that they were so titled. I stated that they are so described, as indeed they are in both FBI and OPR records. Nobody in his right mind would expect such reports to be "specifically labeled

'twice-daily reports.'" These reports are very significant becauae they reflect what the (deceived) Attorney General was told by the FBI. They did exist. There is the strictest possible prohibition of their destruction. Search for them as described by Ms. Ginsberg is deliberate bad faith. It was intended to be a non-search and to be nonproductive.

270. As my counsel also informed defendant's counsel on March 7, 1978, the OPR's records also state that daily reports were provided to Director Hoover. No copies of these have been provided and no real search for them is attested to. Defendant merely conjectured that they could be scattered throughout the MURKIN file. My examination of that file does not confirm this conjecture.

271. The first of my appeals was filed in 1975. On September 16, 1976, AUSA Dugan informed the Court that as of then there were only eight others ahead of me. Yet it was not until five years later that defendant acted on some and most still have not been addressed. Defendant's statement that my appeals in this case would be taken care of as soon as action on eight other appeals was completed was untruthful. When defendant learned that this commitment was not being kept, defendant did not inform the Court about it and contested strongly and frequently untruthfully my accurate representations pertaining to these appeals.

272. It is beyond question that defendant ignored what is most important in what Mr. Shea decided and instead eased him out. He decided and testified that the records needed reprocessing. He stated in his reports to the Court, among other things, that there was no basis for withholding copies of most of the field office MURKIN records as "previously processed" because the FBIHQ and field office copies are not duplicates. He also found that some information appears on field office copies only. There was never any check to determine whether any version of any field office record, among many, many thousands of them, was actually disclosed from FBIHQ files. Defendant merely assumed that if a field office said it sent a record to FBIHQ it was properly filed, was never removed or lost, had provided it and simply withheld it. When in another of my cases Mr. Shea was able to force a check, it was discovered that <u>3,500</u> pages sent to FBIHQ from only two of the 59 field offices could not be located at FBIHQ.

BAD FAITH OF DEFENDANT'S COUNSEL AND WITNESSES PERMEATE THIS CASE

273. In many prior and undisputed affidavits I attest to the permeating bad faith of defendant's filings, testimony and, in particular, defendant's affidavits. My attestations remain uncontested but not because defendant's counsel, staff attorneys and FBI special agents enjoy being proved to be untruthful, under oath. My many attestations to the bad faith that permeates and taints this case, from before the first calendar call and at most of them, are unchallenged because I am accurate and truthful.

274. It is beyond question, as Mr. Shea warned defendant, that the Court and I have been deceived, misled and lied to by defendant.

275. Defendant's counsel, after one experience, refused to cross-examine me. Thereafter, they also, in this and other cases, successfully resisted my testifying. They could and did ignore my affidavits but they would have looked bad in failing to cross-examine me. They carried this to the extreme in opposing the taking of the Zusman deposition under conditions that could permit my presence and in opposing the taking of it at a normal place, my counsel's office. I could have been present at my counsel's office because the person who would have driven me could have parked safely in the building's underground garage. Getting to my counsel's office from there would not have exceeded my physical capabilities. Examination of my August 15, 1982, affidavit addressing Mrs. Zusman's testimony reveals why defendant did not want me present.

276. Those who are not untruthful defend themselves and their reputations. While I then did not use the word, several of defendant's counsel wailed to the Court, "He called us liars. What can I do." Those who do not lie can prove they are truthful. Not once in this very long case did anyone ever make that attempt, for himself or for defendant. They dare not because I am and I seek to be truthful and accurate. They cannot say this for themselves, not one of them. For all their power, influence and resources, they will not make their integrity an issue; and for all their youth and vigor, they will not contend with an unwell, weak and weary old man on the facts of this case or of that terrible assassination or their investigation of it.

277. In the August 15, 1982, part of this affidavit addressing Mrs. Zusman's deposition testimony, herein and in my August 16, 1982, affidavit addressing

defendant's Supplemental Memorandum, I believe that I show, beyond reasonable doubt, that all of defendant's counsel and witnesses (with the exception of the testimony of Messrs. Shea and Mitchell) regularly misinformed, misrepresented, distorted, evaded, deceived and, in general, were untruthful - often knowingly and deliberately - to achieve the ulterior and improper ends to which I attest.

278. As the Court itself noted, they stonewalled. After almost seven years of litigation, they have yet to make the searches required to comply with my requests. Instead, they perpetrated deliberate fraud, that they could comply by providing the FBIHQ MURKIN file only. They provided phony documents and swore they were authentic, and I caught them at it. They made unjustified claims to exemption and withheld improperly and then, in writing and verbally as well as to the Court, stated they would review my written and specific complaints. To this day they have not done so, including not under the Stipulation, which bound them to do it. In substitution and with the intent of avoiding this, they cooked up that consummate demonstration of bad faith, the consultancy; then regularly misrepresented and were untruthful about it; and then, unable to defend what it reflects, just gypped me and lied to the Court about it. Having deceived and misled the Court to have me a agree to the consultancy, they proceeded to violate it from the very first, as they also did with their own Stipulation, which they sought to stretch to cover all their many noncompliances. Both required that the Court be told untruths and time after time they told the Court those untruths - even repeating them after being corrected by the Court, my counsel and me.

279. As I state at the outset, the foregoing is anything but a complete reoounting of defendant's bad faith. It is limited to the calendar calls and then is further limited to what I included in the summary I prepared for my counsel for entirely different purposes. It also does not include the calendar calls which followed those I was able to include in the summary. The defendant also demonstrated bad faith in them, including by but not limited to adducing untruthful testimony.

280. Only a court can decide what is perjury and whether it is suborned. In this case I have proven over and over again - without a single refutation or a single attempt at refutation - that there was false swearing and that in at least some instances the counsel who presented it should have known it was false swearing. During the pendency of this case these counsel were reminded by the Attorney General

- on "Law Day" - that under the Rules they are required to have reason to believe anything they present to a court. Defendant is not about to prosecute or chastise himself; but whether or not there was perjury and its subornation, these sworn and unsworn untruthsserve the purposes of suborned perjury. Either way both are the worst bad faith.

281. Our major political assassinations are the most terrible and the most deeply subversive of crimes. In this subject matter defendant has accredited me as a unique expert. My study is longer, broader, deeper and muhh more extensive than any other. I know of no significant error I have made in seven books, in coutitless public appearances and debates, or in any of my innumerable, lengthy and detailed affidavits, and I do not recall that any have ever been called to my attention, directly or indirectly. This defendant is responsible for the major official investigations of the assassinations of President Kennedy and Dr. King. My examination of this defendant's record in the investigations of both crimes discloses major failings and shortcomings. I am the one who brought most of defendant's failings and shortcomings to light. This has earned me defendant's enmity. Without dispute, the case record reflect that in 1967 the FBI decided to "stop" me and my writing by keeping me tied up in litigation. Defendant's record in this case as documented in this and related affidavits is entirely consistent with if not intended to further that improper objective. Aside from all else that can fairly be said about this, it certainly is another facet of defendant's bad faith.

282. There is another and a dangerous consequence of this bad faith. While I am not a lawyer, my other experiences are extensive. Forty years ago I was a correspondent and wrote on national and international affairs. I worked for the Senate and in intelligence as an analyst of political affairs. My experiences with and under the Freedom of Information Act and with this defendant are considerable and years long. I have observed the courts and their functioning more than most nonlawyers and with a knowledge that most lawyers cannot have of what is before the courts. Based on this experience, I believe that defendant's bad faith that I document has the serious and dangerous consequence of underminigng the independence of the judiciary, of endangering if not nullifying justice and of negating an enactment of the Congress. I beliwve that if the executive branch can do these things to the legislative or the judicial, it can be hazardouws to their independence

ADDENDUM TO AFFIDAVIT OF SEPTEMBER 9, 1982

286. After completing the third of my recent affidavits addressing bad faith in this case of defendant's counsel and witnesses, I decided that, even though I had stated that for all their length these affidavits could not be inclusive, another of defendant's present counsel's extraordinary demonstrations of bad faith ought to be included. While to a degree it is in the case record - and entirely undisputed - the case record is so voluminous and covers so long a period of time it might not be recalled.

287. Present defendant's counsel, in almost every conceivable way short of dynamiting, obstructed the depositions. Beginning with the practice of being late, he interrupted and harassed constantly, addressed my counsel, a court reporter and me loudly and offensively, including with blatant lies, slapped the table noisily with both palms, beat on it with his fists, threatened to end the taking of testimony, shouted, threatened my counsel with violence and so terrified an innocent, inoffensive and quite competent court reporter that she refused to continue taking the testimony. The last day he represented FBI special agent witnesses he so frightened my then assistant, Ms. Rae Barrett, that she fled the conference room in which the depositinns were taken and did not return until he had left the building.

288. The commotion he created, which regularly disturbed the entire floor of offices my counsel then shared with others in the Christian Science Building, was so severe and annoying that one of the other men told me that if it happened once more he would literally throw defendant's counsel out. That was after the FBI depositions, the first of the two days of appeals office depositions. Messrs. Mitchell and Shea were the witnesses. He moderated once he was not putting on his show before - and with - the FBI SAs.

289. He objected to everything, ranging from how my counsel elected to ask his questions to the sequence in which he used exhibits to the infrequent and temporary absence of an extra retention copy of an exhibit - even to when and how long the lunch break would be. Throughout all of this and more bad behavior, he tried to load the transcript with the most prejudicial falsehoods of his own creation, particularly as he sought to try his case on me. Once I forced this to

an issue, he shifted his offense, concentrating his very offensive behavior on my counsel.

290. Particularly during the deposition of SA Kilty, who is a professional witness and within my personal experience a professional perjurer, he behaved very badly.

291. Kilty is a Lab agent. In his book on the FBI, written with FBI cooperation, Sanford Ungar states that these agents are specially trained to frustrate cross-examination so successfully they intimidate private counsel. Kilty is exceptionally adept at nonresponsiveness, evasiveness and snide and disconcerting cracks. He could and did wander and question in order not to respond and to disconcert. Especially with him, as I detected what he was doing, I wrote short reminders for my counsel. From time to time I whispered to him. Once Kilty saw me pass a note or whisper, he would stop in mid-sentence and merely stare. Then, but more often before Kilty could go into his act, defendant's counsel would allege, usually loudly, that I was disconcerting Kilty and in general interfering with his testimony. This, of course, was false. There is nothing unusual in passing a note to counsel and my whispering, into my counsel's ear, was intended not to be overheard. Once my counsel called his bluff by asking him to repeat what he claimed I had whispered loud enough for him to hear. He could not because he was lying to create a false and prejudicial record. In an effort to end this, when he made one of his threats to terminate the depositions over it, I told him to go ahead and do it, that he was not going to keep me from conferring with my counsel.

292. What finally ended his concentration on me with his dirty tricks was my appearance one morning with a tape recorder. He asked what it was for and I told him to make a tape recording to reflect that he was lying in his claims that I was speaking out loud and disturbing his witnesses. He then refused to let that deposition start. I offered to let him run the recorder if he would preserve the tape. He refused. I made it clear that I was willing for the matter to be taken to the Court. He knew there was no shortage of witnesses. I did not remove the tape recorder, which I had not turned on. We would have gone to the Court if he had not agreed for my counsel to make a statement for the record in which he noted the falsity of defendant's counsel's allegations. Defendant's counsel did not elect to make even a pro forma denial.

293. Instead, he began to concentrate his tricks on my counsel. He let himself go so far in this that he claimed my counsel was responsible for his claimed inability to keep his own papers in order.

294. He insisted on sitting between the FBI agents and my counsel. This meant that both attorneys had to try to crowd all their papers onto the same area of table space. His insistence upon occupying that one particular position at the not at all inadequate conference table meant that my counsel had to keep many of his papers on the floor.

295. We almost always had extra copies of exhibits for him and the SAs. The only exceptions were when something unanticipated came up. When we offered to xerox a retention copy immediately on the office copier, he still made personal complaints against my counsel and delayed the deposition until it was done.

296. When the questioning returned to an earlier exhibit, he was loud in verbal complaints, slapping and fist-banging, for all the world as though it is unheard-of and somehow wrong to confront an adverse witness with a contradiction or a reminder.

297. He arranged to be so late that the morning session was as much as a third over before he showed up with his witnesses. He then pulled every kind of trick to waste more time. He insisted on breaks outside the conference room for his client to reread or discuss a not unfamiliar record, which was almost always a short one. Often he would take long periods of time for them or for alleged conferring with the SAs - and them only. On occasion the private corridor or the receptions room was not adequate for his contrived needs for privacy. He even asked for and used my counsel's office - with its door closed even though we were not close by. He thus got two FBI SAs into my counsel's office for up to a half-hour at a time.

298. The last morning of FBI depositions he loudly and emphatically insulted and offended the cultured court reporter who had done and said nothing to provoke him. He then created quite a commotion by insisting on taking a long lunch break although he, personally, had wasted an inordinate amount of time. When my counsel, in order to complete the deposition that day despite all of this and other stonewalling, refused, he got so offensive and so abusive that my counsel got up and left the room, leaving all his papers behind. After my counsel left, defendant's counsel, careful to keep his voice low, threatened my counsel with physical violence. At that

point I decided that something forceful had to be done to end this kind of very bad personal conduct. So I called after my counsel and asked him to return. I then repeated the threat and neither he nor the agents denied he had made it. My counsel just stood there, waiting for him to make good on his threat and looking at him in silence. The two agents (the second was Jack Slicks, of the FBI's Legal Counsel Division) tried to quiet him and then took him away to lunch.

299. Ms. Barrett had fled in panic. As soon as he left, the court reporter phoned her office to say she could not carry on, to report that she had never been so abused in her life, and to urge that she be replaced with a man.

300. The most common of his many efforts to disconcert and distract my counsel and impede the orderly flow of questions and testimony was to contrive reasons for his witness not to answer. Often he succeeded. Often, too, the agents used the time to figure out some way of not responding, sometimes by asking questions and by addressing something else.

301. He did not pull any of his shenanigans when Messrs. Mitchell and Shea were the witnesses, but he did try to keep them from answering. Both are attorneys. They ignored him - They listened to him in silence and then answered. But that did not stop him. While he did not succeed in talking them into not answering, he did succeed in wasting still more time. Some of their testimony was to fact that was not to his liking, as he knew it would be from what Mr. Shea had already testified to and stated in several reports to the Court.

302. As the Court noted, defendant had something to hide. This extraordinarily bad behavior did succeed in keeping some of it hidden. However, it did not prevent the disclosure of the exact opposite of some of what defendant had told the Court.

303. As soon as what he was up to was apparent, I asked my counsel to take his conduct to the Court. My counsel declined in order not to further burden the Court because this case already had been stonewalled for so long by defendant. He told me that, in spite of these endless bad-faith carryings-on, the record would still reflect that the searches were not made, that pertinent records were withheld and other noncompliance. It does. For example, in deposing Wiseman and Kilty, we learned that Kilty had not made the search Wiseman swore he had made. From Kilty we learned of the existence of pertinent Lab records of the withheld NAA printouts

(Polaroids) and the fact that they were not in Central Records. (Defendant had repeatedly told the Court and me the untruth that all FBIHQ records are in Central Records.) Messrs. Shea and Mitchell testified of personal knowledge that the FBI's divisions do have their own records, giving the lie to the FBI's oft-repeated falsehood that the divisions have no records. Hartingh was unable to explain how, with thet FBI liberality of which his successor Beckwith had boasted, parts of the "liberally" reprocessed prosecutorial index were reduced by half; or how what had not been withheld was withheld after this "liberality" in greater "disclosure." He promised to do so, but he still has not. The depositions left it beyond question that no real searches were ever made, that pertinent records remain withheld and that defendant gave the Court sworn-to untruth.

304. For some of the continued withholding of the clearly pertinent and for some of the persisting refusal to make pertinent searches defendant's counsel has personal responsibility. For example, when Kilty admitted having located - but not provided - those NAA printouts (Polaroids), we asked for their belated production. Defendant's counsel refused. He told me to make a new request - for what I had specifically requested in Item 2 of my April 15, 1975, request - more than four years earlier. When we established that no search outside of MURKIN had been made to comply with Item 7 of that request and also established the unquestionable need to search the 94 files for compliance, he again refused to have this done. As a result, and also as a result of the undeviating refusal to confront my affidavits while claiming that no material facts remain in dispute, the printouts are still withheld and the required searches remain unmade. He also heard Mr. Shea and Mr. Mitchell testify that the Stipulation records were processed improperly. They remain improperly processed.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 14th day of September 1982 Deponent Harold Weisberg has appeared and signedthhis affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1986.

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

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and to American concdpts of freedom and self-government - regardless of what is in the minds of those responsible, regardless of how worthwhile they may regard their objectives.

283. While these should be the concerns of all, perhaps they are of more concern to me because I am a first-generation American whose parents, having survived one of the worst of history's tyrannies, came here so that they and I might be free. Anything that can in any way or in any degree present any hazard to any freedom therefore concerns me much. I believe this bad faith represents such a danger.

284. I believe that the Freedom of Information Act bespeaks a uniquely American concept, that in a free and reppesentative society and for its preservation the people have the right to know what their government does. I therefore believe that anything which subverts the letter, spirit or purposes of the Act is such a danger and that defendant's bad faith that I document is such a danger.

285. I believe also that freedoms are like muscles, they must be exercised for their preservation; that to protect them is, to the degree each can assume it, a personal responsibility; and that to the degree each may make this effort, he serves public whether or not personal interests. I therefore believe that in documenting defendant's bad faith in this litigation, I do serve a necessary public interest. At my age, in my impaired health, and with all else I would for selfish or personal reasons like to have done with the time and effort this affidavit required, I believe I serve no selfish interest in documenting this defendant's bad faith.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 9th day of September 1982 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.
My commission expires July 1, 1986.

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND